



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

Toll Free: 866-850-0511  
Fax: 609-633-6337  
E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)  
Web Address:  
[www.nj.gov/grc](http://www.nj.gov/grc)

COMMISSIONER JOSEPH V. DORIA, JR.  
COMMISSIONER LUCILLE DAVY  
ROBIN BERG TABAKIN  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

**FINAL DECISION**

**February 27, 2008 Government Records Council Meeting**

Mike Mathis  
Complainant  
v.

Complaint No. 2007-115

Burlington County Board of Chosen Freeholders  
Custodian of Record

At the February 27, 2008 public meeting, the Government Records Council ("Council") considered the February 20, 2008 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that this complaint should be dismissed because the Complainant has voluntarily withdrawn this complaint in a letter to the GRC dated February 4, 2008.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 27<sup>th</sup> Day of February, 2008

Robin Berg Tabakin, Vice Chairman  
Government Records Council



I attest the foregoing is a true and accurate record of the Government Records Council.

Kathryn Forsyth  
Government Records Council

**Decision Distribution Date: February 29, 2008**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
February 27, 2008 Council Meeting**

**Mike Mathis<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-115**

v.

**Burlington County Board of Chosen Freeholders<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Inspect the Mount Holly Needs Assessment Study for Burlington County.

**Request Made:** May 1, 2007

**Response Made:** May 10, 2007

**Custodian:** Ralph Shrom

**GRC Complaint Filed:** May 10, 2007

**Background**

**December 19, 2007**

Government Records Council's ("Council") Interim Order. At its December 19, 2007 public meeting, the Council considered the December 12, 2007 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that the complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances because the Custodian has not complied with the Council's October 31, 2007 Interim Order, and thus is in contempt of such Order.

**December 20, 2007**

Council's Interim Order distributed to the parties.

**December 20, 2007**

Custodian's response to the Council's Interim Order. The Custodian states that he realized that he failed to file a certification with the GRC indicating that he had complied with the Council's October 31, 2007 Interim Order. The Custodian asks how he can now meet said certification requirement.

**December 20, 2007**

---

<sup>1</sup> No legal representation listed on file.

<sup>2</sup> Represented By Carl Buck, Esq. (Mount Holly, NJ).

E-mail from GRC to Custodian. The GRC states that the Council's December 19, 2007 Interim Order stands as is and this complaint will be transmitted to the Office of Administrative Law for further adjudication because the Custodian's actions are not in compliance with the Council's Interim Order.

**February 4, 2008**

Complaint forwarded to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

**February 4, 2008**

Letter from Complainant to Office of Administrative Law and copied to the GRC. The Complainant voluntarily withdraws his complaint because the matter has been amicably resolved between the parties.

**Analysis**

The Complainant voluntarily withdrew his complaint in a letter to the GRC dated February 4, 2008, therefore no analysis is needed.

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because the Complainant has voluntarily withdrawn this complaint in a letter to the GRC dated February 4, 2008.

Prepared By:

Dara Lownie  
Senior Case Manager

Approved By:

Catherine Starghill, Esq.  
Executive Director

February 20, 2008



## State of New Jersey

### GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

Toll Free: 866-850-0511  
Fax: 609-633-6337  
E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)  
Web Address:  
[www.nj.gov/grc](http://www.nj.gov/grc)

VINCENT P. MALTESE, Chairman  
ACTING COMMISSIONER JOSEPH V. DORIA, JR.  
COMMISSIONER LUCILLE DAVY  
ROBIN BERG TABAKIN  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

### INTERIM ORDER

#### December 19, 2007 Government Records Council Meeting

Mike Mathes  
Complainant

Complaint No. 2007-115

v.

Burlington County Board of Chosen Freeholders  
Custodian of Record

At the December 19, 2007 public meeting, the Government Records Council ("Council") considered the December 12, 2007 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the complainant should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances because the Custodian has not complied with the Council's October 31, 2007 Interim Order, and thus is in contempt of such Order.

Interim Order Rendered by the  
Government Records Council  
On The 19<sup>th</sup> Day of December, 2007

Robin Berg Tabakin, Vice Chairman  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

David Fleisher, Secretary  
Government Records Council

**Decision Distribution Date: December 20, 2007**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
December 19, 2007 Council Meeting**

**Mike Mathes<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-115**

v.

**Burlington County Board of Chosen Freeholders<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Inspect the Mount Holly Needs Assessment Study for Burlington County.

**Request Made:** May 1, 2007

**Response Made:** May 10, 2007

**Custodian:** Ralph Shrom

**GRC Complaint Filed:** May 10, 2007

**Background**

**October 31, 2007**

Government Records Council's ("Council") Interim Order. At its October 31, 2007 public meeting, the Council considered the October 24, 2007 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The evidence of record does not support a conclusion that the Custodian's response to the Complainant's OPRA request required an extraordinary expenditure of time and effort pursuant to N.J.S.A. 47:1A-5.c. and the court's holding in The Courier Post v. Lenape Regional High School, 360 N.J. Super. 191, 199 (Law Div. 2002) because redactions are part of the Custodian's responsibilities pursuant to OPRA. Therefore, based on the characteristics of the agency, specifically that it would take the Custodian an estimated two (2) hours and fifteen (15) minutes to copy, redact and return the one hundred one (101) page record to its non-archived location, the special service charge asserted by the Custodian is not warranted or reasonable pursuant to N.J.S.A. 47:1A-5.c. However, the Custodian is permitted to charge the appropriate copying fees.

---

<sup>1</sup> No legal representation listed on file.

<sup>2</sup> Represented By Carl Buck, Esq. (Mount Holly, NJ).

2. The Custodian shall release the requested record to the Complainant with appropriate redactions and a legal justification for each redacted part thereof and upon payment of copying fees.
3. **The Custodian shall comply with item # 2 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**

**November 15, 2007**

Council's Interim Order distributed to the parties.

**November 15, 2007**

E-mail from Custodian to GRC. The Custodian states that he will consult with legal counsel regarding the GRC's Interim Order. The Custodian also states that the October 24, 2007 Findings and Recommendations of the Executive Director indicates that he refused mediation. The Custodian asserts that he notified the GRC via fax that he would be willing to mediate this matter, but was advised by the previous Case Manager that because the Complainant refused to mediate, the Custodian's agreement became moot.

**November 15, 2007**

E-mail from GRC to Custodian. The GRC states that its records do not include the correspondence the Custodian mentioned in his previous e-mail. The GRC states that in any event, the Custodian would not have been able to mediate this complaint because the Complainant refused to participate in mediation. The GRC also states that this issue does not alter the Council's conclusions or the directive included in the Interim Order.

**November 15, 2007**

E-mail from Custodian to GRC. The Custodian attaches a copy of his facsimile to the GRC dated May 23, 2007 indicating that although the Complainant declined mediation, the Custodian would be willing to participate.<sup>3</sup>

**Analysis**

**Whether the Custodian complied with the Council's October 31, 2007 Interim Order?**

Although the Custodian contacted the GRC via e-mail confirming receipt of the Council's October 31, 2007 Interim Order, the Custodian has not provided the GRC with the requested certification, pursuant to N.J. Court Rule 1:4-4, within the ordered five (5) business days certifying that the Custodian has complied with the Council's Interim Order by releasing the requested record to the Complainant with appropriate redactions and a legal justification for each redacted part thereof and upon payment of copying fees.

---

<sup>3</sup> Although the Custodian provided the GRC with documentation indicating that he accepted the GRC's Offer of Mediation, the Complainant's May 21, 2007 refusal to mediate renders the Custodian's agreement moot.

Therefore, because the Custodian has not complied with the Council's October 31, 2007 Interim Order, and thus is in contempt of such Order, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends that the Council find that the complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances because the Custodian has not complied with the Council's October 31, 2007 Interim Order, and thus is in contempt of such Order.

Prepared By:

Dara Lownie  
Senior Case Manager

Approved By:

Catherine Starghill, Esq.  
Executive Director

December 12, 2007





## State of New Jersey

### GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

Toll Free: 866-850-0511  
Fax: 609-633-6337  
E-mail: [grc@dca.state.nj.us](mailto:grc@dca.state.nj.us)  
Web Address:  
[www.nj.gov/grc](http://www.nj.gov/grc)

VINCENT P. MALTESE, Chairman  
ACTING COMMISSIONER JOSEPH V. DORIA, JR.  
COMMISSIONER LUCILLE DAVY  
ROBIN BERG TABAKIN  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

### INTERIM ORDER

#### October 31, 2007 Government Records Council Meeting

Mike Mathis  
Complainant

Complaint No. 2007-115

v.

Burlington County Board of Chosen Freeholders  
Custodian of Record

At the October 31, 2007 public meeting, the Government Records Council ("Council") considered the October 24, 2007 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council adopted the entirety of said findings and recommendations by a majority vote. The Council, therefore, finds that:

1. The evidence of record does not support a conclusion that the Custodian's response to the Complainant's OPRA request required an extraordinary expenditure of time and effort pursuant to N.J.S.A. 47:1A-5.c. and the court's holding in The Courier Post v. Lenape Regional High School, 360 N.J. Super. 191, 199 (Law Div. 2002) because redactions are part of the Custodian's responsibilities pursuant to OPRA. Therefore, based on the characteristics of the agency, specifically that it would take the Custodian an estimated two (2) hours and fifteen (15) minutes to copy, redact and return the one hundred one (101) page record to its non-archived location, the special service charge asserted by the Custodian is not warranted or reasonable pursuant to N.J.S.A. 47:1A-5.c. However, the Custodian is permitted to charge the appropriate copying fees.
2. The Custodian shall release the requested record to the Complainant with appropriate redactions and a legal justification for each redacted part thereof and upon payment of copying fees.
3. **The Custodian shall comply with item # 2 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**



Interim Order Rendered by the  
Government Records Council  
On The 31<sup>st</sup> Day of October, 2007

Vincent Maltese, Chairman  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records  
Council.

Robin Berg Tabakin, Vice Chairman  
Government Records Council

**Decision Distribution Date: November 15, 2007**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
October 31, 2007 Council Meeting**

**Mike Mathis<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-115**

v.

**Burlington County Board of Chosen Freeholders<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Inspect the Mount Holly Needs Assessment Study for Burlington County.

**Request Made:** May 1, 2007

**Response Made:** May 10, 2007

**Custodian:** Ralph Shrom

**GRC Complaint Filed:** May 10, 2007

**Background**

**May 1, 2007**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**May 10, 2007**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the seventh (7<sup>th</sup>) business day following receipt of such request. The Custodian states that the requested report is a draft report which contains advisory, consultative and deliberative material such as the conceptual options, which is exempt from disclosure under OPRA and is therefore subject to redaction. The Custodian states that if the Complainant would like to view the report with the redactions, a special service charge will be charged based on the hourly rate of the staff member assigned to complete the redactions. The Custodian estimates that it would take one (1) to two (2) hours to review and redact the requested report and asserts that based on past experience, the fee would range from \$30.00 to \$50.00 per hour.

---

<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Carl Buck, Esq., Assistant Burlington County Solicitor (Mount Holly, NJ).

**May 10, 2007**

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching the Custodian’s response dated May 10, 2007 to the Complainant’s OPRA request. The Complainant states that he contests the Custodian’s charge of \$30.00 to \$50.00 per hour for one (1) to two (2) hours of redacting the requested record. The Complainant states that pursuant to N.J.S.A. 47:1A-5.c., a reasonable special service charge can be charged when the request involves an extraordinary expenditure of time. The Complainant asserts that the time estimated by the Custodian to complete the redactions does not qualify as extraordinary under the circumstances. Additionally, the Complainant states that the Custodian failed to address the fourteen (14) point special service charge analysis as required by the GRC before charging a special service charge pursuant to *Donato v. Jersey City Police Department*, December 14, 2006.<sup>3</sup>

**May 21, 2007**

Offer of Mediation sent to both parties.

**May 21, 2007**

The Complainant declines mediation and requests that the GRC begin a full investigation of this complaint. The Custodian also did not agree to mediate this complaint.

**May 22, 2007**

Request for the Statement of Information sent to the Custodian.

**May 31, 2007**

Custodian’s Statement of Information (“SOI”) with the following attachments:

- Complainant’s OPRA request dated May 1, 2007
- Custodian’s response to the OPRA request dated May 10, 2007
- *Burlington County Times* article entitled “Report looks at options for county court complex” dated May 5, 2007

The Custodian certifies receiving the Complainant’s OPRA request on May 1, 2007 and providing a written response on May 10, 2007. The Custodian certifies that the record responsive to the Complainant’s request is a one hundred one (101) page draft document entitled, “Mount Holly Campus Needs Assessment for Burlington County” dated December 2006. The Custodian certifies that the requested record is currently being modified and expanded. The Custodian also certifies that the record has not been provided to the Complainant because the Complainant is contesting the fees associated with the redaction of the record.

The Custodian asserts that the requested record contains both public information and advisory, consultative and deliberative information which is intermingled throughout the record. The Custodian contends that redacting the consultative and deliberative material would take approximately one (1) to two (2) hours. The Custodian asserts that the Complainant’s request does involve an extraordinary expenditure of time pursuant to

---

<sup>3</sup> James Donato v. Jersey City Police Department, GRC Complaint No. 2005-251 (April 2007).  
Mike Mathis v. Burlington County Board of Chosen Freeholders, 2007-115 – Findings and Recommendations of the Executive Director 2

N.J.S.A. 47:1A-5.c. The Custodian certifies that both he and his legal counsel will review the requested records for redactions and that the Custodian intends to charge the lesser of the two (2) hourly rates. The Custodian also certifies that if the redaction process does not exceed one (1) hour, the Complainant will not be charged a special service charge.

Further, the Custodian certifies that he has responded to the GRC's fourteen (14) point special service charge analysis. The Custodian contends that he has used a one (1) hour minimum standard for assessing a special service charge because neither the statute nor the GRC have provided a basic standard in terms of time spent fulfilling a records request. The Custodian's responses to the fourteen (14) special service charge questions are as follows:

<b>Question</b>	<b>Custodian's Response</b>
1. The volume, nature, size, number of government records involved.	One (1) record comprised of one hundred one (101) pages.
2. The period of time over which the records were received.	This cannot be easily quantified. The record is a work in progress and the initial draft would have been received around December 2006.
3. Whether some or all of the records sought are archived.	None of the records have been archived.
4. The amount of time required for a government employee to locate, retrieve and assemble the documents for copying.	An estimated ten (10) to fifteen (15) minutes.
5. The amount of time, level, rate and number, if any required to be expended by government employees to monitor the inspection or examination.	Inspection is not at issue.
6. The amount of time required to return documents to their original storage place.	An estimated five (5) minutes.
7. The size of the agency.	Burlington County has 1,800 employees
8. The number of employees available to accommodate documents requested.	Most requests are handled by the Custodian. The Custodian does utilize legal counsel in matters which require legal advice and interpretation. Counsel does assist the Custodian with redacting records.

9. The availability of information technology and copying capabilities.	Copying capabilities are not at issue.
10. What was requested?	A draft study entitled, "Mount Holly Campus Needs Assessment Study for Burlington County" which is one hundred one (101) pages in its present draft form.
11. The level(s) of skill necessary to accommodate the request.	The skill of an attorney familiar with OPRA and with the ability to discern public information from advisory, consultative and deliberative material is needed to assist the Custodian in redacting the requested record.
12. The reason(s) that the agency employed, or intends to employ the particular level(s) of skill above.	The Custodian asserts that he is not fully aware of information which may be deemed advisory, consultative or deliberative.
13. A detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents.	Time to be spent copying the record – ten (10) to fifteen (15) minutes; time to be spend redacting the record – one (1) to two (2) hours; time to be spent returning the record – five (5) to ten (10) minutes.
14. Who in the agency will perform the work associated with each request?	Copying of the record will be undertaken by clerical staff. Redaction of the record will be handled by the Custodian and legal counsel in consultation with the County Administrator and Deputy Administrator, if necessary.

### Analysis

#### **Whether the special service charge assessed by the Custodian is warranted and reasonable pursuant to OPRA?**

Whenever a records custodian asserts that fulfilling an OPRA records request requires an "extraordinary" expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5.c. In this regard, OPRA provides:

"Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an *extraordinary expenditure of time and effort to accommodate the request*, the public agency may charge, in addition to the actual cost of duplicating the record, a *special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies ...*" (Emphasis added.) N.J.S.A. 47:1A-5.c.

The determination of what constitutes an “extraordinary expenditure of time and effort” under OPRA must be made on a case by case basis and requires an analysis of a variety of factors. These factors were discussed in The Courier Post v. Lenape Regional High School, 360 N.J.Super. 191, 199 (Law Div. 2002). There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. *Id.* at 193. Lenape assessed a special service charge due to the “extraordinary burden” placed upon the school district in responding to the request. *Id.*

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5.c. *Id.* at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA:

- The volume of government records involved;
- The period of time over which the records were received by the governmental unit;
- Whether some or all of the records sought are archived;
- The amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying;
- The amount of time, if any, required to be expended by government employees to monitor the inspection or examination;<sup>4</sup> and
- The amount of time required to return the documents to their original storage place. *Id.* at 199.

The court determined that in the context of OPRA, the term “extraordinary” will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. *Id.* at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” *Id.*

Recognizing that many different variables may affect a determination of whether a special service charge is reasonable and warranted, the GRC established an analytical framework for situations which may warrant an assessment of a special service charge. This framework incorporates the factors identified in the Courier Post case, as well as additional relevant factors. For the GRC to determine when and whether a special service charge is reasonable and warranted, a Custodian must provide a response to the following questions:

1. The volume, nature, size, number, of government records involved,
2. The period of time over which the records were received,
3. Whether some or all of the records sought are archived,

---

<sup>4</sup> With regard to this factor, the court stated that the government agency should bear the burden of proving that monitoring is necessary. *Id.* at 199.

4. The amount of time required for a government employee to locate, retrieve and assemble the documents for copying,
5. The amount of time, level, rate and number, if any required to be expended by government employees to monitor the inspection or examination, and,
6. The amount of time required to return documents to their original storage place,
7. The size of the agency,
8. The number of employees available to accommodate documents requests,
9. The availability of information technology and copying capabilities,
10. What was requested,
11. The level(s) of skill necessary to accommodate the request,
12. The reason(s) that the agency employed, or intends to employ, the particular level(s) of skill above,
13. A detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents, and
14. Who in the agency will perform the work associated with each request?

In this instant matter, the Custodian certifies that the requested record consists of one hundred one (101) pages and is not archived. The Custodian certifies that Burlington County employs 1,800 employees and that only the Custodian and the attorney would be responsible for fulfilling the OPRA request. The Custodian also certifies that it would take approximately ten (10) to fifteen (15) minutes to copy the requested record, one (1) to two (2) hours for the Custodian and the attorney to redact the advisory, consultative and deliberative information from the record, and approximately five (5) to ten (10) minutes returning the record to its location.

N.J.S.A. 47:1A-5.a. provides that a custodian shall redact any privileged information from a requested record prior to allowing access to said record. Additionally, N.J.S.A. 47:1A-5.c. permits a custodian to charge a special service charge in addition to the actual cost of duplicating the record if accommodating the request requires an extraordinary expenditure of time and effort.

As stated in Courier Post, the term “extraordinary” will vary among agencies. In Courier Post, the court held that “satisfying a request for 6 ½ years of attorneys’ monthly itemized bills consisting of potentially thousands of pages requires ‘an extraordinary expenditure of time and effort.’”

However, in this instant complaint, the evidence of record does not support a conclusion that the Custodian’s response to the Complainant’s OPRA request required an extraordinary expenditure of time and effort pursuant to N.J.S.A. 47:1A-5.c. and the court’s holding in The Courier Post v. Lenape Regional High School, 360 N.J. Super. 191, 199 (Law Div. 2002) because redactions are part of the Custodian’s responsibilities pursuant to OPRA.

In Courier Post, the school district wanted thousands of dollars to comply with the request for records, claiming that an extraordinary burden was placed on the district by the request. *Id.* at 193. The publisher contended that its expense should be limited to the statutory fees for copies requested. *Id.* at 198. The court found that the legislative findings, expressed in N.J.S.A. 47:1A-1, stated that it was the public policy of New



Jersey for government records to be readily accessible for inspection, copying, and examination by the citizens of New Jersey. *Id.* A charge for redaction by attorneys of their bills, based upon a claim of privileged or confidential data, was not proper. The court found that it did not understand why it would be necessary for such matters to appear on an attorney's bill in the first place. *Id.* at 206-07. To allow such fees could turn an otherwise ordinary request for records into one that required an extraordinary expenditure of time. *Id.* However, the court found that the request for six and one-half years of attorneys' monthly itemized bills required an "extraordinary expenditure of time and effort" to accommodate the request. *Id.* at 202. As the court noted,

"[i]n the context of the Act, that term is incapable of a one-fits-all definition. There are many variables which require flexibility in the meaning of that term. The size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size, and number of documents sought, are but a few variables which can serve to modify the meaning of 'extraordinary.' Indeed, what may appear to be extraordinary to one school district might be routine to another. Here, the sheer volume of documents and the amount of time (ten to fifteen days) to locate and assemble them renders this request 'extraordinary,' allowing the imposition of a 'special service charge.'" *Id.*

Therefore, a special service charge was allowed for the custodian's time. *Id.*

Based on the characteristics of the agency, specifically that it would take the Custodian an estimated two (2) hours and fifteen (15) minutes to copy, redact and return the one hundred one (101) page record to its non-archived location, the special service charge asserted by the Custodian is not warranted or reasonable pursuant to N.J.S.A. 47:1A-5.c. However, the Custodian is permitted to charge the appropriate copying fees.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The evidence of record does not support a conclusion that the Custodian's response to the Complainant's OPRA request required an extraordinary expenditure of time and effort pursuant to N.J.S.A. 47:1A-5.c. and the court's holding in The Courier Post v. Lenape Regional High School, 360 N.J. Super. 191, 199 (Law Div. 2002) because redactions are part of the Custodian's responsibilities pursuant to OPRA. Therefore, based on the characteristics of the agency, specifically that it would take the Custodian an estimated two (2) hours and fifteen (15) minutes to copy, redact and return the one hundred one (101) page record to its non-archived location, the special service charge asserted by the Custodian is not warranted or reasonable pursuant to N.J.S.A. 47:1A-5.c. However, the Custodian is permitted to charge the appropriate copying fees.

2. The Custodian shall release the requested record to the Complainant with appropriate redactions and a legal justification for each redacted part thereof and upon payment of copying fees.
3. **The Custodian shall comply with item # 2 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**

Prepared By:

Dara Lownie  
Senior Case Manager

Approved By:

Catherine Starghill, Esq.  
Executive Director

October 24, 2007