



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

November 4, 2009 Government Records Council Meeting

Reinaldo E. Aviles
Complainant

Complaint No. 2008-191

v.

Perth Amboy Board of Education (Middlesex)
Custodian of Record

At the November 4, 2009 public meeting, the Government Records Council (“Council”) considered the October 21, 2009 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:

1. Although the Custodian did not provide access to the requested meeting minutes immediately, the Custodian did not violate N.J.S.A. 47:1A-5.i. because the Custodian made the requested meeting minutes available to the Complainant within the statutorily mandated seven (7) business day response time.
2. Although the Custodian granted access to the requested meeting minutes within the statutorily mandated seven (7) business day response time, the Custodian’s two (2) verbal responses to the Complainant’s OPRA request dated June 30, 2008 are insufficient pursuant to N.J.S.A. 47:1A-5.g. because said responses are not in writing.
3. Because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Starkey v. NJ Department of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009).
4. Because the Custodian certified that providing immediate access to the requested bills would substantially disrupt the operations of his agency, and because the Custodian properly requested an extension of time to respond to the Complainant’s OPRA request, the Custodian’s request for an extension of



time to respond to the Complainant's OPRA requests is a sufficient and reasonable solution that accommodates the interests of the requestor and the agency, pursuant to N.J.S.A. 47:1A-5.g.

5. The Custodian's estimated 59.15 hour expenditure of time to fulfill the Complainant's request constitutes an extraordinary expenditure of time and warrants a special service charge pursuant to N.J.S.A. 47:1A-5.c.
6. The Custodian's estimated special service charge of \$2,177.16 is reasonable pursuant to N.J.S.A. 47:1A-5.c. because it reflects the actual direct cost of fulfilling the Complainant's OPRA request.
7. Because the Custodian provided the Complainant with the opportunity to review and object to the *charge* prior to it being incurred pursuant to N.J.S.A. 47:1A-5.c., and because OPRA is silent on whether such review must also include a detailed breakdown of how the charge was calculated, the Custodian has not violated said provision of OPRA.
8. Because the Custodian has not yet made any redactions to the requested bills, the Custodian is not obligated to explain why there *might* be confidential information contained on said records pursuant to N.J.S.A. 47:1A-5.g.
9. The Custodian has not unlawfully denied access to the Complainant's OPRA request dated August 5, 2008 because the Custodian assessed a reasonable special service charge of \$2,177.16 which reflects the actual direct cost of fulfilling the Complainant's OPRA request and because the Custodian has not yet made any redactions to the requested bills.
10. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has not achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus does not exist between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (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 4th Day of November, 2009

Robin Berg Tabakin, Chair
Government Records Council

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

Janice L. Kovach, Secretary
Government Records Council

Decision Distribution Date: November 9, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 4, 2009 Council Meeting**

**Reinaldo E. Aviles¹
Complainant**

GRC Complaint No. 2008-191

v.

**Perth Amboy Board of Education (Middlesex)²
Custodian of Records**

Records Relevant to Complaint:

- OPRA request dated June 30, 2008 – Inspection of the last ten (10) meeting minutes of the Board of Education’s Curriculum Subcommittee meetings.³
- OPRA request dated August 5, 2008 – Inspection of all bills paid from June 30, 2007 through July 1, 2008.

Requests Made: June 30, 2008 and August 5, 2008

Responses Made:

Custodian: Derek J. Jess

GRC Complaint Filed: August 25, 2008⁴

Background

June 30, 2008

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

July 8, 2008

Custodian’s response to the Complainant’s first OPRA request. The Custodian responds via voicemail message to the Complainant’s OPRA request on the fifth (5th) business day following receipt of such request. The Custodian states that the requested records are available for review.

July 9, 2008

Custodian’s subsequent response to the Complainant’s first OPRA request. The Custodian responds via voicemail message to the Complainant’s OPRA request on the

¹ Represented by Walter M. Luers, Esq., of Walter M. Luers, LLC (Oxford, NJ).

² Represented by Victor J. Medina, Esq., of Medina, Martinez & Castroll, LLC (Pennington, NJ).

³ The Complainant requested an additional record; however, said record is not the subject of this Denial of Access Complaint.

⁴ The GRC received the Denial of Access Complaint on said date.

sixth (6th) business day following receipt of such request. The Custodian states that the requested records are available for review.

August 5, 2008

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

August 7, 2008

Custodian's response to the Complainant's second OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the second (2nd) business day following receipt of such request. The Custodian states that due to the voluminous nature of the Complainant's request, the Custodian cannot provide immediate access to the requested bills. The Custodian states that the requested records fill approximately ten (10) file cabinet drawers and must be reviewed for potential redactions to information such as social security numbers, personal credit card numbers and advisory, consultative or deliberative material.

The Custodian assesses a \$2,177.16 special service charge to accommodate the Complainant's request and asks for a deposit of \$1,000.00. The Custodian states that if the Complainant narrows his request for specific bills, the Custodian may reduce or eliminate the special service charge. Additionally, because of the voluminous nature of this request, the Custodian requests an extension of time until August 26, 2008 to provide the requested bills to the Complainant.

August 25, 2008

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:

- Complainant's OPRA request dated June 30, 2008
- Complainant's OPRA request dated August 5, 2008
- Custodian's response to the Complainant's second OPRA request dated August 7, 2008

The Complainant states that he submitted his OPRA request on June 30, 2008 in which he requested on site inspection of the last ten (10) Board of Education ("BOE") Curriculum Subcommittee meetings. The Complainant states that the BOE told him that they could not provide immediate access to said minutes but that they would call him when said minutes were available. The Complainant states that the Custodian provided access to said minutes approximately six (6) days later without any explanation for the delay.

Additionally, the Complainant states that he submitted a second OPRA request on August 5, 2008 for bills. The Complainant states that on August 7, 2008 the Custodian assessed a special service charge of \$2,177.16 claiming that the requested bills contained social security numbers, personal credit card numbers and advisory, consultative and deliberative material which must be redacted. The Complainant states that the Custodian did not explain how he calculated the charge or why the bills contained such information.

The Complainant requests immediate access to the requested records and an award of reasonable prevailing party attorney's fees. Additionally, the Complainant does not agree to mediate this complaint.

September 2, 2008

Letter of Representation from Custodian's Counsel.

September 4, 2008

Request for the Statement of Information ("SOI") sent to the Custodian.

September 16, 2008

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated June 30, 2008
- Complainant's OPRA request dated August 5, 2008
- Custodian's response to the Complainant's second OPRA request dated August 7, 2008
- Perth Amboy Board of Education Summary Bills and Claims Report by Vendor Name dated June 1, 2008 to June 30, 2008

The Custodian certifies that he received the Complainant's first OPRA request on June 30, 2008. The Custodian certifies that he left a voicemail message for the Complainant on July 8, 2008 advising that the requested records were available for review. The Custodian certifies that he left another message for the Complainant on July 9, 2008 advising that the requested records were available for review. The Custodian states that the Complainant called the Custodian on July 11, 2008 and indicated that he would inspect the records on July 15, 2008. The Custodian states that the Complainant reviewed said records on July 15, 2008.

The Custodian asserts that the requested meeting minutes are not records for which immediate access shall ordinarily be granted pursuant to N.J.S.A. 47:1A-5.e. The Custodian states that pursuant to N.J.S.A. 47:1A-5.i, records requests must be answered within seven (7) business days. The Custodian contends that because he made said records available to the Complainant within the statutorily mandated seven (7) business days, he has complied with the provisions of OPRA. Additionally, the Custodian states that when the Custodian has provided the requested records within the proscribed time period, there is no denial of access. See Herron v. Borough of Montclair, GRC Complaint No. 2007-111 (September 2007); Johnson v. Borough of Oceanport, GRC Complaint No. 2007-202 (March 2008). The Custodian claims that the Complainant's Denial of Access Complaint is frivolous and without any reasonable factual basis and requests that the Council dismiss said complaint.

Additionally, the Custodian states that Ms. Evelyn Hernandez, the Custodian's Administrative Assistant, received the Complainant's second OPRA request on August 5, 2008. The Custodian certifies that he was out of the country at the time of said request. The Custodian states that when Ms. Hernandez received the Complainant's OPRA request, she advised the Complainant that the Custodian was out of the office, and that

because of the large volume of records requested, the BOE may not be able to provide the records immediately. The Custodian states that Ms. Hernandez gave said OPRA request to the Assistant Business Administrator who e-mailed the request to the Custodian. The Custodian states that between August 5, 2008 and August 7, 2008 the BOE made attempts to reach him via e-mail and voicemail to facilitate responding to said request.

The Custodian states that the Assistant Business Administrator determined that the records responsive to this request comprised approximately ten (10) file cabinet drawers or 20-25 copy paper boxes. The Custodian attaches a 25-page line item list of checks issued to pay vendors for the month of June 2008 as an example of the records requested. The Custodian certifies that there is at least one page of bills for each line item indicated on said list.

Further, the Custodian states that the Assistant Business Administrator estimated that it would take approximately 40-50 personnel hours to review all of the bills for potential redactions. For example, the Custodian states that vouchers for reimbursement of travel expenses might contain personal credit card numbers.⁵

The Custodian certifies that based on the Assistant Business Administrator's finding, the Custodian concluded that the records were too voluminous to be provided within the statutorily mandated seven (7) business days because doing so would substantially disrupt the operations of the agency. Thus, the Custodian certifies that he concluded that the extraordinary amount of time required to fulfill said request warranted a special service charge pursuant to N.J.S.A. 47:1A-5.c.

The Custodian certifies that he authorized the Assistant Business Administrator to respond to the Complainant's request within one (1) business day. The Custodian states that on August 7, 2008 the Assistant Business Administrator, on behalf of the Custodian, informed the Complainant that a written response to his second OPRA request was available at the BOE office. The Custodian states that said response advised the Complainant that immediate access to the requested records was not possible because of the voluminous nature of the request, some information may be redacted from the records, the BOE needed to assess a special service charge to fulfill his voluminous request unless the Complainant narrowed the request, and that the BOE needed an extension of time beyond the seven (7) business days to comply with the request. The Custodian states that the Complainant picked up said response from the BOE office on August 7, 2008.

The Custodian states that pursuant to N.J.S.A. 47:1A-5.g., if a request would substantially disrupt the operations of the agency, the custodian may deny access to the record after attempting to reach a reasonable solution that accommodates the interest of the requestor and the agency. The Custodian states that "[d]isruption may be inferred [where a request] necessitates work by [agency] employees that is neither assigned by the agency nor envisioned by OPRA." New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 181 (App. Div. 2006). The

⁵ The Custodian provides additional examples of records that *might* contain confidential information. Reinaldo E. Aviles v. Perth Amboy Board of Education (Middlesex), 2008-191 – Findings and Recommendations of the Executive Director

Custodian asserts that when a request requires extensive time and effort, it is substantially disruptive.

Additionally, the Custodian states that the GRC previously held that the redaction of an enormous volume of records was a substantial disruption to an agency. Specifically, in Vessio v. New Jersey Department of Consumer Affairs, GRC Complaint No. 2007-63⁶ the Complainant sought access to twenty years of fire safety violations. The Custodian certified that redacting said records would substantially disrupt the operations of the office. The Council held that the Custodian's denial of access was supported by N.J.S.A. 47:1A-5.i.

Regarding this instant OPRA request, the Custodian contends that the request is so voluminous that it is impossible to provide immediate access to the requested records, and that providing access within seven (7) business days would substantially disrupt the operations of the agency. The Custodian asserts that in accordance with N.J.S.A. 47:1A-5.g., he attempted to reach a reasonable solution with the Complainant by requesting a ten (10) business day extension of time with a special service charge or asking the Complainant to narrow his request. The Custodian also states that he offered to discuss any other suggestions the Complainant may have.

Additionally, the Custodian contends that "immediate access" does not always mean that access to a public record must be granted at the moment the request is received. The Custodian states that in Renna v. County of Union, GRC Complaint No. 2005-180 (November 2005), the Council held that a response one (1) day after receipt of the request constituted "immediate access." The Custodian asserts that N.J.S.A. 47:1A-5.e. also provides for circumstances in which immediate access is not possible. The Custodian states that in O'Shea v. Township of West Milford, GRC Complaint Nos. 2004-207 and 2005-31 (September 2005), the Complainant submitted an OPRA request for bills when the Custodian was out of the office and there was no employee authorized to respond to OPRA requests. The Custodian responded to the request when he returned to the office on the following day and the Council held that said response was timely, applying the seven (7) business day timeline. Thus, the Custodian in this instant complaint asserts that the BOE's August 7, 2008 response to the Complainant's second OPRA request is a timely response under the immediate access provision of OPRA. N.J.S.A. 47:1A-5.e.

Additionally, the Custodian states that OPRA allows for the imposition of a special service charge when fulfilling the request requires an extraordinary amount of time and effort. N.J.S.A. 47:1A-5.c. The Custodian also states that pursuant to Courier Post v. Lenape Regional School District, 360 N.J. Super. 191, 202-203 (Law Div. 2002), a special service charge is warranted when the custodian must review thousands of pages for potential redactions.

The Custodian asserts that given the nature of the Complainant's request, a special service charge is warranted. The Custodian states that he utilized the GRC's 14

⁶ Vessio v. New Jersey Department of Community Affairs, Division of Fire Safety, GRC Complaint No. 2007-63 (May 2007).
Reinaldo E. Aviles v. Perth Amboy Board of Education (Middlesex), 2008-191 – Findings and Recommendations of the Executive Director

point analysis when making this determination. Additionally, the Custodian claims that OPRA does not require him to specify how it arrives at the special service charge, only that the charge be reasonable, based on actual direct cost, and that the requestor be afforded an opportunity to review and object to the charge prior to it being incurred. The Custodian states that he concluded that a fee of \$2,177.66 was reasonable under the circumstances.

Further, the Custodian asserts that the obligation to state the basis for redactions only applies when there is an actual denial of access to information. The Custodian contends that because he did not deny access to any information, and only claimed that there *may* be some confidential information contain on said records needing redaction, the Custodian is not obligated to explain why the requested bills contain confidential information.

The Custodian claims that the Complainant's Denial of Access Complaint is frivolous and without any reasonable factual basis and requests that the Council dismiss said complaint. The Custodian requests that the Council find that the Custodian did not violate OPRA by providing a written response to the Complainant's second OPRA request on August 7, 2008. The Custodian also requests that the Council find that the Complainant's second OPRA request warranted a special service charge.

The Custodian also certifies that no records responsive to either of the Complainant's OPRA requests were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management ("DARM").

Further, the Custodian contends that he did not knowingly and willfully violate OPRA. Regarding the Complainant's OPRA request dated June 30, 2008, the Custodian asserts that he provided the records to the Complainant. Regarding the Complainant's OPRA request dated August 5, 2008, the Custodian contends that he consulted GRC materials and acted on legal advice to properly respond to said request.

June 3, 2009

The Complainant Counsel's response to the Custodian's SOI. The Complainant's Counsel states that pursuant to OPRA, "a custodian...shall grant access to a government record or deny a request for access to a government record *as soon as possible*, but not later than seven (7) business days after receiving the request..." (Emphasis added). N.J.S.A. 47:1A-5.i. Counsel contends that the GRC should give effect to the clear legislative intent and require that the Custodian should have provided access to the requested minutes immediately.

Additionally, Counsel asserts that the Custodian's failure to describe how the special service charge was calculated is a violation of OPRA. Further, Counsel contends that the Custodian should have provided immediate access to the records that did not require any redactions.

June 12, 2009

Letter from Custodian's Counsel to GRC. The Custodian's Counsel states that the meeting minutes requested in the Complainant's June 30, 2008 OPRA request were not readily available, which is why it took the Custodian five (5) days to provide access to said minutes. Counsel asserts that nothing in said request required immediate access under OPRA.

Additionally, Counsel states that the Custodian did address how the special service charge was calculated in his SOI submission when the Custodian indicated that the BOE estimated approximately 40 personnel hours to fulfill the Complainant's OPRA request dated August 5, 2008. Further, Counsel contends that the Custodian could not have provided immediate access to the records which did not contain any redactions because the Custodian could not readily identify said records without reviewing all of the requested records.

July 23, 2009

Letter from GRC to Custodian's Counsel. The GRC requests that the Custodian provide a legal certification in response to the following questions:

1. What records are requested?
2. Give a general nature description and number of the government records requested.
3. What is the period of time over which the records extend?
4. Are some or all of the records sought archived or in storage?
5. What is the size of the agency (total number of employees)?
6. What is the number of employees available to accommodate the records request?
7. To what extent do the requested records have to be redacted?
8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve and assemble the records for copying?
9. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?
10. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to return records to their original storage place?
11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?
12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?
13. What is the availability of information technology and copying capabilities?
14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents.

July 30, 2009

Custodian's Certification. The Custodian certifies that his responses to the questions below are true to the best of his knowledge.

Questions	Custodian's Response
1. What records are requested?	All bills paid during fiscal year 2007-2008.
2. Give a general nature description and number of the government records requested.	The records requested encompass all purchase orders, invoices, receipts, vouchers, receiving reports, and packing slips received by the BOE for payment of goods and services during fiscal year 2007-2008. The records fill ten (10) 26-inch deep file cabinet drawers. Based on one (1) ream of paper (500 pages) being 2-inches thick, the records are estimated to be 65,000 pages.
3. What is the period of time over which the records extend?	12 consecutive months - fiscal year 2007-2008.
4. Are some or all of the records sought archived or in storage?	At the time of the OPRA request, none of the records were in storage. However, as of the date of this certification, said records were relocated to storage to make room for the fiscal year 2008-2009 records. If the OPRA request were filed today, the special service charge would reflect the additional time it would take to retrieve these records from storage.
5. What is the size of the agency (total number of employees)?	The BOE employs over 2,100 individuals. The Business Office, which is responsible for handling OPRA requests, employs ten (10) individuals including the Custodian.
6. What is the number of employees available to accommodate the records request?	While there are ten (10) individuals in the Business Office, only three (3) employees have sufficient familiarity with the subject matter to accommodate the request: a Secretary who handles the BOE's bills, the Assistant Business Administrator and the Business Administrator.
7. To what extent do the requested records have to be redacted?	It is not yet determined which records require redactions. The Custodian must carefully examine each record for any potential redactions such as social security numbers, unlisted telephone numbers, driver's license numbers, student information, or attorney-client privileged information.
8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve and assemble the records for copying?	<p>The following estimate includes the time to review the records for potential redactions, make said redactions, and provide copies of the redacted records.</p> <p>Secretary: \$29.48/hour for 40 hours (based on Secretary's estimate of how long it would take to complete task).</p> <p>Business Administrator: \$84.38/hour for 7 hours (based on the Business Administrator's estimate of how long it would take to review all of the potentially confidential information and make necessary redactions).</p>
9. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?	<p>The following is an estimate based on the volume of the request:</p> <p>Secretary: \$29.48/hour for 1.25 hours</p> <p>Business Administrator: \$84.38/hour for 0.9 hours</p> <p>However, the Custodian's asserted special service charge would cover the total time for monitoring the inspection regardless of how much time the Complainant required.</p>
10. What is the level of personnel, hourly rate and number of hours, if any, required	The records were not in storage at the time of the request and would be returned to the ten (10) file cabinet drawers. The Secretary estimated 10 hours of time at \$29.48/hour. The Secretary's estimate is based on her 25 years experience

for a government employee to return records to their original storage place?	annually packing these documents for off-site storage.
11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?	The Business Office employs eight (8) staff members other than supervisors. Each employee has distinct job responsibilities that do not overlap with other employees. The employees who exclusively handle the payment of bills and invoices are one (1) Secretary and the Business Administrator. Enlisting the assistance of any other employee would require training, instruction and supervision, which would increase the special service charge.
12. Who (name and job title) in the agency will perform the work associated with the records request and that person’s hourly rate?	Brenda Nolan, Secretary, at \$29.48/hour. However, Ms. Nolan has retired since the date of the OPRA request. If the request was made today, the hourly rate of the new secretary would apply. Derek J. Jess, Business Administrator, at \$84.38/hour.
13. What is the availability of information technology and copying capabilities?	The BOE has a copy machine on site. The BOE did not include charges related to the copying of any redacted records in its special service charge.
14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents.	Costs to identify, locate, retrieve, assemble, copy, redact records: <ul style="list-style-type: none"> ▪ Secretary – 40 hours at \$29.48/hour = \$1,179.20 ▪ Business Administrator – 7 hours at \$84.38/hour = \$590.66 Costs to re-file records after inspection: <ul style="list-style-type: none"> ▪ Secretary – 10 hours at \$29.48/hour = \$294.80 Costs to monitor the inspection, examination, redaction of records: <ul style="list-style-type: none"> ▪ Secretary – 1.25 hours at \$29.48/hour = \$36.55 ▪ Business Administrator – 0.90 hours at \$84.38/hour = \$575.95 ▪ Total estimated cost = \$2,177.16

Analysis

Whether the Custodian unlawfully denied access to the requested records?

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or*

kept on file ... or that has been received in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA provides that:

“[w]henver 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 ... 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* ... The requestor shall have the opportunity to review and object to the charge prior to it being incurred. (Emphasis added). N.J.S.A. 47:1A-5.c.

OPRA states that:

“[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy therefor ... If the government record requested is temporarily unavailable because it is in use or in storage, the custodian shall so advise the requestor and shall make arrangements to promptly make available a copy of the record. If a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” N.J.S.A. 47:1A- 5.g.

Additionally, OPRA provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request ... failure to respond shall be deemed a denial of the request*If the government record is in storage or archived, the requestor shall be so advised within seven business days after the custodian receives the request. The requestor shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied.” (Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

Complainant’s OPRA Request Dated June 30, 2008

The Custodian certified that he received the Complainant’s first OPRA request on June 30, 2008. The Custodian certified that he contacted the Complainant via telephone on July 8, 2008 and July 9, 2008, the fifth (5th) and sixth (6th) business days following receipt of said request, in which the Custodian informed the Complainant that the requested minutes were available for review.

The Complainant’s Counsel states that pursuant to OPRA, “a custodian...shall grant access to a government record or deny a request for access to a government record *as soon as possible*, but not later than seven (7) business days after receiving the request...” (Emphasis added). N.J.S.A. 47:1A-5.i. Counsel contends that the GRC should give effect to the clear legislative intent and require that the Custodian should have provided access to the requested minutes immediately.

OPRA does specifically provide for immediate access to certain records. Specifically, OPRA states that “[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” N.J.S.A. 47:1A-5.e. However, the Complainant’s OPRA request dated June 30, 2008 sought access to meeting minutes, which are not specifically listed as immediate access records. Thus, the Custodian was obligated to follow OPRA’s default timeline for responding to an OPRA request.

The Complainant’s Counsel is correct that OPRA mandates that a custodian must either grant or deny access to requested records as soon as possible, but not later than seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. While it may have been the legislative intent for custodians to grant access to government records as soon as possible, the Legislature also included a time limit for a response, which is seven (7) business days following receipt of a request. In this instant complaint, the Custodian made the requested records available on the fifth (5th) business day following receipt of the Complainant’s request, which is clearly within the statutorily mandated seven (7) business day response time.

Therefore, although the Custodian did not provide access to the requested meeting minutes immediately, the Custodian did not violate N.J.S.A. 47:1A-5.i. because the Custodian made the requested meeting minutes available to the Complainant within the statutorily mandated seven (7) business day response time.

However, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g.⁷ Here, the Custodian certified that he granted access to the requested records via telephone on two (2) separate occasions. The Custodian failed to provide the Complainant with a written response to his June 30, 2008 OPRA request.

Therefore, although the Custodian granted access to the requested meeting minutes within the statutorily mandated seven (7) business day response time, the Custodian's two (2) verbal responses to the Complainant's OPRA request dated June 30, 2008 are insufficient pursuant to N.J.S.A. 47:1A-5.g. because said responses are not in writing.

Complainant's August 5, 2008 OPRA Request

The GRC first turns to the issue of whether the Custodian responded to the Complainant's OPRA request in a timely manner. The Custodian certified that he received the Complainant's OPRA request on August 5, 2008 for all bills paid from June 30, 2007 through July 1, 2008. The Custodian certified that he provided the Complainant with a written response on the second (2nd) business day following receipt of said request in which the Custodian indicated that the records encompass ten (10) file cabinet drawers, and that due to the volume of the records responsive, the Custodian would not be able to provide immediate access. The Custodian requested an extension of time until August 26, 2008 assessing a special service charge to fulfill the request, or asked the Complainant to narrow his request. In the Custodian's SOI, the Custodian certified that providing immediate access to the requested bills, or providing access within the statutorily mandated seven (7) business days, would substantially disrupt the operations of the agency.

OPRA provides that "[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency." N.J.S.A. 47:1A-5.g. Here, the Custodian attempted to reach a reasonable solution with the requestor that accommodated the interests of the requestor and the agency by requesting an extension of time until August 26, 2008 to respond to the Complainant's OPRA requests. OPRA provides for such requests in N.J.S.A. 47:1A-5.i., which states that "[t]he requestor shall be advised by the custodian when the record can be made available. If the record is not made available by that time, access shall be deemed denied."

The Council has further described the requirements for a proper request for an extension of time. Specifically, in Starkey v. NJ Department of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009), the Custodian provided the Complainant with a written response to his OPRA request on the second

⁷ It is the GRC's position that a custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

(2nd) business day following receipt of said request in which the Custodian requested an extension of time to respond to said request and provided the Complainant with an anticipated deadline date upon which the Custodian would respond to the request. The Council held that “because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5.g. [and] N.J.S.A. 47:1A-5.i.”

Similarly in this instant complaint, the Custodian provided the Complainant with a written response to his OPRA request on the second (2nd) business day following receipt of said request in which the Custodian requested an extension of time until August 26, 2008 to respond to said request.

Therefore, because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Starkey, supra.

Further, because the Custodian certified that providing immediate access to the requested bills would substantially disrupt the operations of his agency, and because the Custodian properly requested an extension of time to respond to the Complainant’s OPRA request, the Custodian’s request for an extension of time to respond to the Complainant’s OPRA requests is a sufficient and reasonable solution that accommodates the interests of the requestor and the agency, pursuant to N.J.S.A. 47:1A-5.g.

Next, the GRC addresses the Custodian’s asserted special service charge. N.J.S.A. 47:1A-5.c. permits a custodian to charge a special service charge that is reasonable and based upon the actual direct cost of providing the copy or copies in addition to the actual cost of duplicating the record if accommodating the request requires an extraordinary expenditure of time and effort. Additionally, the Custodian must provide the Complainant with an opportunity to object to the special service charge prior to said charge being incurred.

The GRC established criteria for the assessment of whether a special service charge is warranted and reasonable in Fisher v. Division of Law and Public Safety, GRC Complaint No. 2004-55 (December 2004). The same questions asked in Fisher provide the basis for the analysis in this instant complaint. The GRC’s questions and the Custodian’s responses are as follows:

Questions	Custodian’s Response
1. What records are requested?	All bills paid during fiscal year 2007-2008.
2. Give a general nature description and number of the government records requested.	The records requested encompass all purchase orders, invoices, receipts, vouchers, receiving reports, and packing slips received by the BOE for payment of goods and services during fiscal year 2007-2008. The records fill ten (10) 26-inch deep file cabinet drawers. Based on one (1) ream of paper (500 pages) being 2-inches thick, the records are estimated to be 65,000 pages.

3. What is the period of time over which the records extend?	12 consecutive months - fiscal year 2007-2008.
4. Are some or all of the records sought archived or in storage?	At the time of the OPRA request, none of the records were in storage. However, as of the date of this certification, said records were relocated to storage to make room for the fiscal year 2008-2009 records. If the OPRA request were filed today, the special service charge would reflect the additional time it would take to retrieve these records from storage.
5. What is the size of the agency (total number of employees)?	The BOE employs over 2,100 individuals. The Business Office, which is responsible for handling OPRA requests, employs ten (10) individuals, including the Custodian.
6. What is the number of employees available to accommodate the records request?	While there are ten (10) individuals in the Business Office, only three (3) employees have sufficient familiarity with the subject matter to accommodate the request: a Secretary who handles the BOE's bills, the Assistant Business Administrator and the Business Administrator.
7. To what extent do the requested records have to be redacted?	It is not yet determined which records require redactions. The Custodian must carefully examine each record for any potential redactions such as social security numbers, unlisted telephone numbers, drivers license numbers, student information, or attorney-client privileged information.
8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve and assemble the records for copying?	The following estimate includes the time to review the records for potential redactions, make said redactions, and provide copies of the redacted records. Secretary: \$29.48/hour for 40 hours (Based on Secretary's estimate of how long it would take to complete task). Business Administrator: \$84.38/hour for 7 hours (Based on the Business Administrator's estimate of how long it would take to review all of the potentially confidential information and make necessary redactions).
9. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?	The following is an estimate based on the volume of the request: Secretary: \$29.48/hour for 1.25 hours Business Administrator: \$84.38/hour for 0.9 hours However, the Custodian's asserted special service charge would cover the total time for monitoring the inspection regardless of how much time the Complainant required.
10. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to return records to their original storage place?	The records were not in storage at the time of the request and would be returned to the ten (10) file cabinet drawers. The Secretary estimated 10 hours of time at \$29.48/hour. The Secretary's estimate is based on her 25 years experience annually packing these documents for off-site storage.
11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the	The Business Office employs eight (8) staff members other than supervisors. Each employee has distinct job responsibilities that do not overlap with other employees. The employees who exclusively handle the payment of bills and invoices are one (1) Secretary and the Business Administrator. Enlisting the

records request?	assistance of any other employee would require training, instruction and supervision, which would increase the special service charge.
12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?	Brenda Nolan, Secretary, at \$29.48/hour. However, Ms. Nolan has retired since the date of the OPRA request. If the request was made today, the hourly rate of the new secretary would apply. Derek J. Jess, Business Administrator, at \$84.38/hour.
13. What is the availability of information technology and copying capabilities?	The BOE has a copy machine on site. The BOE did not include charges related to the copying of any redacted records in its special service charge.
14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents.	Costs to identify, locate, retrieve, assemble, copy, redact records: <ul style="list-style-type: none"> ▪ Secretary – 40 hours at \$29.48/hour = \$1,179.20 ▪ Business Administrator – 7 hours at \$84.38/hour = \$590.66 Costs to re-file records after inspection: <ul style="list-style-type: none"> ▪ Secretary – 10 hours at \$29.48/hour = \$294.80 Costs to monitor the inspection, examination, redaction of records: <ul style="list-style-type: none"> ▪ Secretary – 1.25 hours at \$29.48/hour = \$36.55 ▪ Business Administrator – 0.90 hours at \$84.38/hour = \$75.95 ▪ Total estimated cost = \$2177.16

Before the Council can assess whether a special service charge is reasonable, the Council must assess whether the special service charge is warranted. Pursuant to N.J.S.A. 47:1A-5.c., special service charges are only warranted when fulfilling the request requires an extraordinary expenditure of time and effort. What constitutes an extraordinary expenditure of time and effort is subjective and depends on the specific circumstances surrounding the request and as well as the size of the agency.

Here, the Custodian certified that the requested records encompass all purchase orders, invoices, receipts, vouchers, receiving reports, and packing slips received by the BOE for payment of goods and services during fiscal year 2007-2008. The records fill ten (10) 26-inch deep file cabinet drawers. Based on one (1) ream of paper (500 pages) being 2-inches thick, the records are estimated to be 65,000 pages. The Custodian certified that out of ten (10) employees in the Business Office, only three (3) employees have sufficient familiarity with the subject matter to accommodate the request: a Secretary who handles the BOE's bills, the Assistant Business Administrator and the Business Administrator. Additionally, the Custodian certified that the estimated amount of time to search for, locate, copy, redact and return the records to their original location would be approximately 40 hours for the Secretary and 7 hours for the Business Administrator. The Custodian further certified that the Secretary estimated 10 hours of time to return the records to their original location. The Custodian stated that the Secretary's estimate is based on her 25 years experience annually packing these documents for off-site storage. The total number of personnel hours estimated to fulfill the Complainant's OPRA request amounts to 59.15 hours.

At first glance, one might question why it would take significantly more time to locate, retrieve, and assemble for copying the requested bills than it would take to return said records to their original location when said records are centrally located in ten (10) file cabinet drawers. However, the Custodian submitted to the GRC a 22-page printout of all bills paid in the month of June 2008. Each page of said printout lists at least ten (10) individual bills paid by the BOE. Thus, for each item represented, there is at least one (1) page responsive to the request. However, it is likely that some items contain multiple pages that may be stapled together and require more time to assemble for copying. Taking into account the estimated 65,000 pages of records, it is possible that 40 hours is indeed required to assemble the requested records.

Therefore, the Custodian's estimated 59.15 hour expenditure of time to fulfill the Complainant's request constitutes an extraordinary expenditure of time and warrants a special service charge pursuant to N.J.S.A. 47:1A-5.c.

Because fulfilling the Complainant's OPRA request warrants a special service charge, the Council must now address whether said charge is reasonable. In Courier Post v. Lenape Regional High School District, 360 N.J. Super. 191, 204 (Law Div. 2002), the Appellate Division held that it would be appropriate to calculate the hourly wage rates of the clerical and professional staff involved in satisfying a request and multiplying those figures by the total hours spent, if the Custodian can prove that the professional level of human resource was needed to fulfill the request.

In this instant complaint, the Custodian certified that the hourly rate of the Secretary to complete the search, location, copying and returning of the records to their original location is \$29.48. The Custodian also certified that the hourly rate of the Business Administrator, who would redact any confidential information from the requested records, is \$84.38. The Custodian estimated the majority of the special service charge using the Secretary's hourly rate. In this complaint, it is reasonable for the Secretary, the employee with the lower hourly rate to locate, assemble, copy, and return the records to their original location. It is also reasonable for the Secretary to monitor the inspection of the records. Regarding redactions, however, it might be reasonable that the Secretary could complete such redactions as social security numbers and credit card numbers because such information is easily identifiable. However, because the Business Administrator is the actual Custodian and is therefore held responsible for granting and denying access in accordance with the law pursuant to N.J.S.A. 47:1A-6, it is reasonable for the Business Administrator to complete the redactions because there may be some other types of confidential information contained on the requested records which the Secretary would not recognize. Further, it is reasonable for the Business Administrator to be available during the record inspection to answer any potential questions the Complainant may have regarding some of the redactions.

Therefore, the Custodian's estimated special service charge of \$2,177.16 is reasonable pursuant to N.J.S.A. 47:1A-5.c. because it reflects the actual direct cost of fulfilling the Complainant's OPRA request.

Additionally, the Complainant's Counsel asserts that the Custodian violated OPRA by not describing how he calculated the special service charge. OPRA

specifically states that “[t]he requestor shall have the opportunity to review and object to the charge prior to it being incurred.” N.J.S.A. 47:1A-5.c. OPRA is silent on whether such review must also include a detailed breakdown of how the charge was calculated. Looking at the specific wording of the provision, OPRA states that the Complainant shall have the opportunity to review the *charge*. Here, the Custodian informed the Complainant that the special service charge totaled 2,177.16.

Therefore, because the Custodian provided the Complainant with the opportunity to review and object to the *charge* prior to it being incurred pursuant to N.J.S.A. 47:1A-5.c., and because OPRA is silent on whether such review must also include a detailed breakdown of how the charge was calculated, the Custodian has not violated said provision of OPRA.

Further, the Complainant contends that the Custodian was obligated to explain why the requested bills contained confidential information. The Custodian asserts that the obligation to state the basis for redactions only applies when there is an actual denial of access to information. Specifically, OPRA requires custodians to provide the specific legal basis for a denial of access pursuant to N.J.S.A. 47:1A-5.g.

Here, the Custodian has not yet denied access to any records, or portions of any records. The Custodian indicated that there *might* be some confidential information on the requested bills. Under OPRA, a custodian is not obligated to explain why there might be confidential information contained on government records. The Custodian’s obligation to describe the legal basis for the redaction only comes into play *after* the redactions are actually made.

Therefore, because the Custodian has not yet made any redactions to the requested bills, the Custodian is not obligated to explain why there *might* be confidential information contained on said records pursuant to N.J.S.A. 47:1A-5.g.

In conclusion, the Custodian has not unlawfully denied access to the Complainant’s OPRA request dated August 5, 2008 because the Custodian assessed a reasonable special service charge of \$2,177.16 which reflects the actual direct cost of fulfilling the Complainant’s OPRA request and because the Custodian has not yet made any redactions to the requested bills.

Whether the Complainant is a “prevailing party” pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney’s fees?

OPRA provides that:

“[a] person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:

- institute a proceeding to challenge the custodian's decision by filing an action in Superior Court...; or
- in lieu of filing an action in Superior Court, file a complaint with the Government Records Council...

A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6.

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the court held that a complainant is a “prevailing party” if he/she achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct. *Id.* at 432. Additionally, the court held that attorney’s fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. *Id.*

In Teeters, the complainant appealed from a final decision of the Government Records Council which denied an award for attorney's fees incurred in seeking access to certain public records via two complaints she filed under OPRA, N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7.f., against the Division of Youth and Family Services (“DYFS”). The records sought involved an adoption agency having falsely advertised that it was licensed in New Jersey. DYFS eventually determined that the adoption agency violated the licensing rules and reported the results of its investigation to the complainant. The complainant received the records she requested upon entering into a settlement with DYFS. The court found that the complainant engaged in reasonable efforts to pursue her access rights to the records in question and sought attorney assistance only after her self-filed complaints and personal efforts were unavailing. *Id.* at 432. With that assistance, she achieved a favorable result that reflected an alteration of position and behavior on DYFS’s part. *Id.* As a result, the complainant was a prevailing party entitled to an award of a reasonable attorney's fee. Accordingly, the Court remanded the determination of reasonable attorney’s fees to the GRC for adjudication.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct.” Mason, *supra*, at 71, (quoting Buckhannon Board & Care Home v. West Virginia Department of Health & Human Resources, 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). The court in Buckhannon stated that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” (quoting Black’s Law Dictionary 1145 (7th ed. 1999)). The court in Mason, *supra*, at 76, held that “requestors are entitled to attorney’s fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) ‘a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved’; and (2) ‘that the relief ultimately secured by plaintiffs had a basis in law.’ Singer v. State, 95 N.J. 487, 495, cert denied (1984).”

In this instant complaint, the Complainant’s Denial of Access Complaint was based on the following: the Custodian failed to provide immediate access to the requested meeting minutes and failed to explain the reason for the delay; the Custodian failed to explain how he calculated the special service charge; the Custodian failed to explain why confidential information was contained on the requested bills; and the Custodian failed to provide immediate access to the requested bills.

The Council has determined that the Custodian was not obligated to provide immediate access to the requested meeting minutes; the Custodian was not obligated to explain how he calculated the special service charge and the Custodian properly informed the Complainant of said charge pursuant to N.J.S.A. 47:1A-5.c.; the Custodian was not obligated to explain why confidential information was contained on the requested bills pursuant to N.J.S.A. 47:1A-5.g.; and the Custodian was not obligated to provide immediate access to the requested bills due to the volume of said request and the substantial disruption to agency operations pursuant to N.J.S.A. 47:1A-5.g.

Pursuant to Teeters, supra, the Complainant has not achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” *Id.* at 432. Additionally, pursuant to Mason, supra, a factual causal nexus does not exist between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee pursuant to N.J.S.A. 47:1A-6, Teeters, supra, and Mason, supra.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian did not provide access to the requested meeting minutes immediately, the Custodian did not violate N.J.S.A. 47:1A-5.i. because the Custodian made the requested meeting minutes available to the Complainant within the statutorily mandated seven (7) business day response time.
2. Although the Custodian granted access to the requested meeting minutes within the statutorily mandated seven (7) business day response time, the Custodian’s two (2) verbal responses to the Complainant’s OPRA request dated June 30, 2008 are insufficient pursuant to N.J.S.A. 47:1A-5.g. because said responses are not in writing.
3. Because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Starkey v. NJ Department of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009).
4. Because the Custodian certified that providing immediate access to the requested bills would substantially disrupt the operations of his agency, and because the Custodian properly requested an extension of time to respond to the Complainant’s OPRA request, the Custodian’s request for an extension of time to respond to the Complainant’s OPRA requests is a sufficient and reasonable solution that accommodates the interests of the requestor and the agency, pursuant to N.J.S.A. 47:1A-5.g.

5. The Custodian's estimated 59.15 hour expenditure of time to fulfill the Complainant's request constitutes an extraordinary expenditure of time and warrants a special service charge pursuant to N.J.S.A. 47:1A-5.c.
6. The Custodian's estimated special service charge of \$2,177.16 is reasonable pursuant to N.J.S.A. 47:1A-5.c. because it reflects the actual direct cost of fulfilling the Complainant's OPRA request.
7. Because the Custodian provided the Complainant with the opportunity to review and object to the *charge* prior to it being incurred pursuant to N.J.S.A. 47:1A-5.c., and because OPRA is silent on whether such review must also include a detailed breakdown of how the charge was calculated, the Custodian has not violated said provision of OPRA.
8. Because the Custodian has not yet made any redactions to the requested bills, the Custodian is not obligated to explain why there *might* be confidential information contained on said records pursuant to N.J.S.A. 47:1A-5.g.
9. The Custodian has not unlawfully denied access to the Complainant's OPRA request dated August 5, 2008 because the Custodian assessed a reasonable special service charge of \$2,177.16 which reflects the actual direct cost of fulfilling the Complainant's OPRA request and because the Custodian has not yet made any redactions to the requested bills.
10. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has not achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus does not exist between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008).

Prepared By: Dara Lownie
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

October 21, 2009