



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

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**LORI GRIFA**  
*Commissioner*

**FINAL DECISION**

**July 27, 2010 Government Records Council Meeting**

Kimberly Smela  
Complainant

Complaint No. 2009-255

v.

County of Essex  
Custodian of Record

At the July 27, 2010 public meeting, the Government Records Council ("Council") considered the July 20, 2010 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:

1. Because the Custodian made the amount of the special service charge available to the Complainant by the third (3<sup>rd</sup>) business day from receipt of the Council's Interim Order, and because following the lapse of the tenth (10<sup>th</sup>) business day from receipt of the Council's Order the Custodian provided a legal certification to the Executive Director averring that the Complainant failed to pay the special service charge for the requested records, the Custodian has complied with the Council's May 27, 2010 Interim Order.
2. The Custodian made the amount of the special service charge available to the Complainant by the third (3<sup>rd</sup>) business day from receipt of the Council's Interim Order and provided a legal certification to the Executive Director averring that the Complainant failed to pay the special service charge for the requested records following the lapse of the tenth (10<sup>th</sup>) business day from receipt of the Council's Order; therefore the Custodian complied with the terms of the Council's May 27, 2010 Interim Order and it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 July, 2010

Robin Berg Tabakin, Chair  
Government Records Council

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

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: August 2, 2010**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
July 29, 2010 Council Meeting**

**Kimberly Smela<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-255**

v.

**County of Essex<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** A copy of all of the tax maps and a copy of the Geographic Information Systems (“GIS”) parcel layers shape file of Essex County (excluding the City of Newark) on a CD or DVD.

**Request Made:** August 5, 2009

**Response Made:** August 6, 2009

**Custodian:** Albert Fusco, OPRA Officer

**GRC Complaint Filed:** September 4, 2009<sup>3</sup>

**Background**

**May 27, 2010**

At the May 27, 2010 public meeting, the Government Records Council (“Council”) considered the May 20, 2010 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. Because the Custodian failed to meet his burden of proving that the denial of access to the requested records was authorized by law pursuant to N.J.S.A. 47:1A-6., the Custodian must disclose to the Complainant in the requested medium, or another meaningful medium, the records relevant to this complaint.
2. If the records require a substantial amount of manipulation, the Custodian shall calculate in addition to the actual cost of duplicating the records, a special service charge cost which is reasonable and based on the cost for any extensive use of information technology or for the labor cost of personnel providing the service actually incurred by the agency for converting the

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

<sup>2</sup> Represented by Terrienne Moore-Abrams, Esq., (Newark, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

records relevant to the complaint into the requested medium, or another meaningful medium, and thereafter provide the Complainant with an opportunity to review and object to the charge pursuant to N.J.S.A. 47:1A-5.c. and N.J.S.A. 47:1A-5.d.

3. **If applicable, the Custodian shall calculate the appropriate special service charge in accordance with Paragraph No. 2 above and shall make the amount of the charge available to the Complainant within three (3) business days from receipt of the Council's Interim Order. The Custodian shall disclose to the Complainant the requested records (a copy of all of the tax maps and a copy of the Geographic Information Systems parcel layers shape file of Essex County, excluding the City of Newark, on a Compact Disc or Digital Versatile Disc) with any appropriate redactions and a detailed document index explaining the lawful basis for any such redaction upon the Complainant's payment of the special service charge, if any, within ten (10) 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. If a special service charge is applicable and the Complainant fails to pay the special service charge for the requested records by the tenth (10<sup>th</sup>) business day from receipt of the Council's Interim Order, the Custodian shall provide a certification to that effect in accordance with N.J. Court Rule 1:4-4 to the Executive Director.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

#### **June 1, 2010**

Council's Interim Order distributed to the parties.

#### **June 3, 2010**

Letter from LargeDoc Solutions to the Custodian. LargeDoc Solutions informs the Custodian that they will convert the Essex County maps to the electronic media requested by the Complainant for a cost of sixteen thousand four hundred dollars (\$16,400.00). LargeDoc Solutions calculated this amount by charging twelve dollars (\$12.00) for each of twelve hundred (1,200) map images plus a two thousand dollar (\$2,000.00) setup fee to bring the scanner on site. LargeDoc Solutions proposes a start date as early as two (2) weeks from the date of their letter.

#### **June 4, 2010**

E-mail from the Custodian to the Complainant attaching a letter from LargeDoc Solutions to the Custodian dated June 3, 2010. The Custodian informs the Complainant that the County of Essex does not maintain the records relevant to the complaint in the

type of electronic format requested by the Complainant and that they have no employee capable of converting the records. The Custodian further informs the Complainant that he obtained a quotation from a GIS provider to convert the maps into the requested electronic format. The Custodian informs the Complainant that the provider, LargeDoc Solutions, will provide the service for approximately sixteen thousand four hundred dollars (\$16,400.00), based upon the setup fee plus the final number of maps converted at twelve dollars (\$12.00) per map. The Custodian further informs the Complainant that the Custodian will charge the Complainant for the amount actually billed by the GIS provider. The Custodian advises the Complainant that she has seven (7) days to accept the offer; however if she declines she may inspect the maps on site.

### **June 17, 2010**

Custodian's certification in response to the Council's May 27, 2010 Interim Order. The Custodian certifies that in compliance with the terms of the Council's Order he notified the Complainant of the amount of the special service charge for converting the records to the requested medium within three (3) business days from receipt of the Council's Order. The Custodian further certifies that as of this date he has neither received payment of the special service charge nor received any other communication from the Complainant.<sup>4</sup>

### **Analysis**

#### **Whether the Custodian complied with the Council's May 27, 2010 Interim Order?**

The Council's May 27, 2010 Interim Order directed the Custodian to:

1. If applicable, calculate in addition to the actual cost of duplicating the records a special service charge for the labor of personnel providing the service actually incurred by the agency for converting the records relevant to the complaint into the requested medium or another meaningful medium.
2. Make the amount of the charge available to the Complainant within three (3) business days from receipt of the Council's Interim Order.
3. Disclose to the Complainant the requested records with any redactions and a detailed document index explaining the lawful basis for any such redaction upon the Complainant's payment of the special service charge, if any, within ten (10) 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, or

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<sup>4</sup> Because a special service charge was applicable, the Complainant had until the tenth (10<sup>th</sup>) business day from receipt of the Interim Order to pay the special service charge for disclosure of the records in the requested medium. The tenth (10<sup>th</sup>) business day was June 16, 2010.

4. If a special service charge is applicable and the Complainant fails to pay the special service charge for the requested records by the tenth (10<sup>th</sup>) business day from receipt of the Council's Interim Order, provide a certification to that effect in accordance with N.J. Court Rule 1:4-4 to the Executive Director.

On June 4, 2010, the third (3<sup>rd</sup>) business day from receipt of the Council's Interim Order, the Custodian sent an e-mail to the Complainant informing the Complainant of the amount of the special service charge necessary to convert the records to the medium requested by the Complainant and also informing the Complainant that she had seven (7) days to accept the offer. Following the lapse of the tenth (10<sup>th</sup>) business day from receipt of the Council's Order without receiving any communication from the Complainant, the Custodian provided a legal certification to the Executive Director averring that the Complainant failed to pay the special service charge for the requested records.

Accordingly, because the Custodian made the amount of the special service charge available to the Complainant by the third (3<sup>rd</sup>) business day from receipt of the Council's Interim Order, and because following the lapse of the tenth (10<sup>th</sup>) business day from receipt of the Council's Order the Custodian provided a legal certification to the Executive Director averring that the Complainant failed to pay the special service charge for the requested records, the Custodian has complied with the Council's May 27, 2010 Interim Order.

**Whether the Custodian's denial of access to the requested records rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ...” N.J.S.A. 47:1A-11.a.

OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states:

“... If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]...” N.J.S.A. 47:1A-7.e.

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much

more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996).

In the instant matter, the Custodian made the amount of the special service charge available to the Complainant by the third (3<sup>rd</sup>) business day from receipt of the Council's Interim Order and provided a legal certification to the Executive Director averring that the Complainant failed to pay the special service charge for the requested records following the lapse of the tenth (10<sup>th</sup>) business day from receipt of the Council's Order; therefore the Custodian complied with the terms of the Council's May 27, 2010 Interim Order and it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian made the amount of the special service charge available to the Complainant by the third (3<sup>rd</sup>) business day from receipt of the Council's Interim Order, and because following the lapse of the tenth (10<sup>th</sup>) business day from receipt of the Council's Order the Custodian provided a legal certification to the Executive Director averring that the Complainant failed to pay the special service charge for the requested records, the Custodian has complied with the Council's May 27, 2010 Interim Order.
2. The Custodian made the amount of the special service charge available to the Complainant by the third (3<sup>rd</sup>) business day from receipt of the Council's Interim Order and provided a legal certification to the Executive Director averring that the Complainant failed to pay the special service charge for the requested records following the lapse of the tenth (10<sup>th</sup>) business day from receipt of the Council's Order; therefore the Custodian complied with the terms of the Council's May 27, 2010 Interim Order and it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: John E. Stewart  
Case Manager/*In Camera* Attorney

Approved By: Catherine Starghill, Esq.  
Executive Director

July 20, 2010





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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

LORI GRIFA  
Acting Commissioner

INTERIM ORDER

May 27, 2010 Government Records Council Meeting

Kimberly Smela  
Complainant

Complaint No. 2009-255

v.

County of Essex  
Custodian of Record

At the May 27, 2010 public meeting, the Government Records Council (“Council”) considered the May 20, 2010 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. Because the Custodian failed to meet his burden of proving that the denial of access to the requested records was authorized by law pursuant to N.J.S.A. 47:1A-6., the Custodian must disclose to the Complainant in the requested medium, or another meaningful medium, the records relevant to this complaint.
2. If the records require a substantial amount of manipulation, the Custodian shall calculate in addition to the actual cost of duplicating the records, a special service charge cost which is reasonable and based on the cost for any extensive use of information technology or for the labor cost of personnel providing the service actually incurred by the agency for converting the records relevant to the complaint into the requested medium, or another meaningful medium, and thereafter provide the Complainant with an opportunity to review and object to the charge pursuant to N.J.S.A. 47:1A-5.c. and N.J.S.A. 47:1A-5.d.
3. **If applicable, the Custodian shall calculate the appropriate special service charge in accordance with Paragraph No. 2 above and shall make the amount of the charge available to the Complainant within three (3) business days from receipt of the Council’s Interim Order. The Custodian shall disclose to the Complainant the requested records (a copy of all of the tax maps and a copy of the Geographic Information Systems parcel layers shape file of Essex County, excluding the City of**



Newark, on a Compact Disc or Digital Versatile Disc) with any appropriate redactions and a detailed document index explaining the lawful basis for any such redaction upon the Complainant's payment of the special service charge, if any, within ten (10) 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<sup>1</sup>, to the Executive Director. If a special service charge is applicable and the Complainant fails to pay the special service charge for the requested records by the tenth (10<sup>th</sup>) business day from receipt of the Council's Interim Order, the Custodian shall provide a certification to that effect in accordance with N.J. Court Rule 1:4-4 to the Executive Director.

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 27<sup>th</sup> Day of May, 2010

Robin Berg Tabakin, Chair  
Government Records Council

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

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: June 1, 2010**

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<sup>1</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 27, 2010 Council Meeting**

**Kimberly Smela<sup>1</sup>  
Complainant**

**GRC Complaint No. 2009-255**

v.

**County of Essex<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** A copy of all of the tax maps and a copy of the Geographic Information Systems (“GIS”) parcel layers shape file of Essex County (excluding the City of Newark) on a CD or DVD.

**Request Made:** August 5, 2009

**Response Made:** August 6, 2009

**Custodian:** Albert Fusco, OPRA Officer

**GRC Complaint Filed:** September 4, 2009<sup>3</sup>

**Background**

**August 5, 2009**

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.

**August 6, 2009**

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the same date he received the request. The Custodian informs the Complainant that her request is denied because the County of Essex does not maintain electronic tax maps.

**September 4, 2009**

Denial of Access Complaint filed with the Government Records Council (“GRC”) attaching the Complainant’s OPRA request dated August 5, 2010.

The Complainant states that she provided her OPRA request to the Custodian on August 7, 2009.<sup>4</sup> The Complainant does not agree to mediate this complaint.

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

<sup>2</sup> Represented by Terrienne Moore-Abrams, Esq., (Newark, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> The OPRA request which formed the basis of this complaint is dated August 5, 2009.

**September 11, 2009**

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

**September 15, 2009**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated August 5, 2009
- Custodian’s response to the OPRA request dated August 6, 2009

The Custodian certifies that his search for the requested records involved requesting the records relevant to the complaint from the County Department of Public Works and the Office of the Register of Deeds and Mortgages. The Custodian further certifies that he was informed by both offices that there are no electronic versions of the requested records.

The Custodian does not certify as to the last date upon which records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

The Custodian certifies that he received the Complainant’s OPRA request on August 6, 2009 and responded in writing to the Complainant on the same date he received the request informing her that Essex County did not have any records that were responsive to her request because they do not maintain electronic tax maps.

**December 4, 2009**

E-mail from the GRC to the Custodian. The GRC informs the Custodian that the SOI is not clear with respect to Essex County record storage. The GRC requests a clarifying certification from the Custodian as to whether the County of Essex (a) does not have the requested records or (b) does have the requested records but does not maintain them in an electronic format.

**December 4, 2009**

E-mail from the Custodian to the GRC. The Custodian informs the GRC that the County of Essex does not maintain files electronically but the Custodian stated he does know a vendor who can convert records to an electronic format so that the records can be stored on a CD. The Custodian further informs the GRC that he is not sure if the vendor can convert the records to a Geographic Information Systems parcel layers shape file because the Custodian is not familiar with such a file.

**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 also provides that:

“Whenever...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...[t]he 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 further provides that:

“A custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. *If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium.* If a request is for a record...[that] require[es] a substantial amount of manipulation...the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency...” (Emphasis added.) N.J.S.A. 47:1A-5.d.

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.

The evidence of record reveals that the Complainant’s OPRA request dated August 5, 2009 was received by the Custodian on August 6, 2009, and that the Custodian responded to the OPRA request in writing on the same date he received it, informing the Complainant that the County of Essex does not maintain electronic tax maps.

The Custodian in his SOI certified that there are no electronic records kept at Essex County that are responsive to the Complainant’s request; therefore, he did not disclose any records to the Complainant. There is nothing in the evidence of record to indicate that the Custodian made any effort to satisfy the Complainant’s OPRA request by converting the record to the medium requested or providing a copy in some other meaningful medium. Rather, the Custodian did not attempt to fulfill the request because he certified that Essex County does not maintain maps in an electronic format.

Pursuant to N.J.S.A. 47:1A-5.d., the Custodian has an affirmative duty to provide a copy of a record in the medium requested unless the agency does not maintain the record in such a medium, in which case the Custodian is required to either convert the record to the requested medium or provide a copy in another meaningful medium. Here, however, the Custodian failed to make any effort to attempt to convert the record to the medium requested or provide a copy in another meaningful medium.

In Wolosky v. Township of Frankford (Sussex), GRC Complaint No. 2008-254 (November 2009), where the complainant requested delivery of certain records via fax or e-mail and the custodian stated that she did not maintain the records in a format that was conducive to such delivery, the Council decided:

“...in this complaint, if the Custodian does not maintain any of the records responsive in an electronic medium, she is required to convert the records in order to provide them electronically via e-mail.”

Accordingly, because the Custodian failed to meet his burden of proving that the denial of access to the requested records was authorized by law pursuant to N.J.S.A. 47:1A-6., the Custodian must disclose to the Complainant in the requested medium, or another meaningful medium, the records relevant to this complaint.

If the records require a substantial amount of manipulation, the Custodian may charge pursuant to N.J.S.A. 47:1A-5.d., “...in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency...” Further, in accord with N.J.S.A. 47:1A-5.c “...[t]he requestor shall have the opportunity to review and object to the charge prior to it being incurred.”

Therefore if the records require a substantial amount of manipulation, the Custodian shall calculate in addition to the actual cost of duplicating the records, a special service charge which is reasonable and based on the cost for any extensive use of information technology or for the labor cost of personnel providing the service actually incurred by the agency for converting the records relevant to the complaint into the requested medium, or another meaningful medium, and thereafter provide the Complainant with an opportunity to review and object to the charge pursuant to N.J.S.A. 47:1A-5.c. and N.J.S.A. 47:1A-5.d.

**Whether the Custodian’s denial of access to the requested records rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian failed to meet his burden of proving that the denial of access to the requested records was authorized by law pursuant to N.J.S.A. 47:1A-6., the Custodian must disclose to the Complainant in the requested medium, or another meaningful medium, the records relevant to this complaint.
2. If the records require a substantial amount of manipulation, the Custodian shall calculate in addition to the actual cost of duplicating the records, a special service charge cost which is reasonable and based on the cost for any extensive use of information technology or for the labor cost of personnel providing the service actually incurred by the agency for converting the records relevant to the complaint into the requested medium, or another meaningful medium, and thereafter provide the Complainant with an opportunity to review and object to the charge pursuant to N.J.S.A. 47:1A-5.c. and N.J.S.A. 47:1A-5.d.
3. **If applicable, the Custodian shall calculate the appropriate special service charge in accordance with Paragraph No. 2 above and shall make the amount of the charge available to the Complainant within three (3) business days from receipt of the Council’s Interim Order. The Custodian shall disclose to the Complainant the requested records (a copy of all of the tax maps and a copy of the Geographic Information Systems parcel layers shape file of Essex County, excluding the City of Newark, on a Compact Disc or Digital Versatile Disc) with any appropriate redactions and a detailed document index explaining the lawful basis for any such redaction upon the Complainant’s payment of**

**the special service charge, if any, within ten (10) 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<sup>5</sup>, to the Executive Director. If a special service charge is applicable and the Complainant fails to pay the special service charge for the requested records by the tenth (10<sup>th</sup>) business day from receipt of the Council's Interim Order, the Custodian shall provide a certification to that effect in accordance with N.J. Court Rule 1:4-4 to the Executive Director.**

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: John E. Stewart  
Case Manager/*In Camera* Attorney

Approved By: Catherine Starghill, Esq.  
Executive Director

May 20, 2010

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<sup>5</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."