



**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*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**FINAL DECISION**

**September 24, 2013 Government Records Council Meeting**

Darryl W. Simpkins  
Complainant

Complaint No. 2012-259]

v.

Township of Rockaway (Morris)  
Custodian of Record

At the September 24, 2103 public meeting, the Government Records Council (“Council”) considered the September 17, 2013 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. The Custodian complied with the Council’s August 27, 2013 Interim Order because she provided the Complainant with an estimated copy cost and submitted certified confirmation of compliance to the Executive Director within the prescribed time frame.
2. Although the Custodian unlawfully denied access to the minutes responsive to the Complainant’s OPRA request item Nos. 1 and 2, the Complainant’s request item Nos. 3 and 4 were invalid and the Custodian timely complied with the Council’s Interim Order. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and an 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 24th Day of September, 2013

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: September 26, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
September 24, 2013 Council Meeting**

**Darryl W. Simpkins<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-259**

v.

**Township of Rockaway (Morris)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via U.S. mail of:

1. All minutes from planning board hearings leading up to resolutions for block 20001, lots 5.01, 5.05 and 7 TILCON New York Inc., dated December 1, 2008, April 17, 2009, December 20, 2011, April 23, 2012 and February 6, 2012.
2. All minutes from the meeting of the Township of Rockaway ("Township") where the Notices of violation included in the Custodian's OPRA responses were discussed.
3. All correspondence sent or received to/from TILCON or the Morris County Construction Board of Appeals relating to the Notices of violation.

**Custodian of Record:** Susan Best

**Request Received by Custodian:** June 4, 2012

**Response Made by Custodian:** June 5, 2012

**GRC Complaint Received:** September 6, 2012

**Background**

**August 27, 2013 Council Meeting:**

At its August 27, 2013 public meeting, the Council considered the August 20, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian's response to the Complainant's OPRA request item Nos. 1 and 2 was insufficient because the Custodian failed to specifically acknowledge the Complainant's preferred method of delivery (via U.S. mail) and provide an estimated cost accordingly. N.J.S.A. 47:1A-5(g); O'Shea v. Twp. of Fredon (Sussex), GRC Complaint No. 2007-251 (February 2008); Paff v. Borough of Sussex (Sussex), GRC Complaint No. 2008-38 (July 2008).

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

<sup>2</sup> Represented by John M. Iacofano, Esq. (Morristown, NJ).

2. The Custodian has unlawfully denied access to the records responsive to the Complainant's OPRA request item Nos. 1 and 2 because although she granted access to same, she failed to provide the Complainant with an estimated copy cost for the records. N.J.S.A. 47:1A-6. The Custodian must thus provide the copy cost for those records to the Complainant and disclose same upon receipt of payment. *See Paff v. City of Plainfield*, GRC Complaint No. 2006-54 (July 2006); *Ortiz v. NJ Dep't of Corrections*, GRC Complaint No. 2007-101 (November 2008). The Custodian must also indicate if responsive minutes do not exist or have not been approved and are thus not available for disclosure.
3. **The Custodian shall calculate the copy cost in accordance with item 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 with any appropriate redactions and a detailed document index explaining the lawful basis for any such redaction upon the Complainant's payment of the copy cost, 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 the Complainant fails to pay the appropriate copying cost 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. Because the Complainant's request item Nos. 3 and 4 fail to identify the specific subject and identifiable individuals, said requests are invalid and the Custodian has not unlawfully denied access to same. *Elcavage v. West Milford Twp.*, GRC Complaint Nos. 2009-07 and 2009-08 (March 2010); *Armenti v. Robbinsville Bd. of Educ. (Mercer)*, GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011); *Burke v. Brandes*, 429 N.J. Super. 169 (App. Div. 2012); *Wolosky v. Twp of Randolph (Morris)*, GRC Complaint No. 2010-244 (February 2012).
5. 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.

Procedural History:

On August 28, 2013, the Council distributed its Interim Order to all parties. On August 30, 2013, the Custodian advised the Complainant that 456 pages of Planning Board minutes and 9,443 pages of Council minutes are available for disclosure. The Custodian stated that the copy cost to provide same is \$654.95, which includes \$160.00 in postage. On September 5, 2013, the Custodian responded to the Council's Interim Order certifying that she advised the Complainant of the estimated cost to provide records for item Nos. 1 and 2 via letter on August 30, 2013.

On September 12, 2013, the Custodian provided certified confirmation of compliance that the Complainant did not respond to her letter.

## Analysis

### Compliance

At its August 27, 2013 meeting, the Council ordered the Custodian to provide the Complainant an estimated copy cost for the minutes responsive to item Nos. 1 and 2 “... **within three (3) business days from receipt of the Council’s Interim Order ... and within ten (10) business days from receipt of the Council’s Interim Order ... simultaneously provide certified confirmation of compliance ... to the Executive Director ...**” On August 28, 2013, the Council distributed its Interim Order to all parties, providing the Custodian three (3) business days to provide a copy cost to the Complainant and ten (10) business days to comply with the terms of said Order. Thus, the Custodian’s response was due by close of business on September 12, 2013.

On August 30, 2013, the second (2<sup>nd</sup>) business day after receipt of the Council’s Order, the Custodian provided an estimated copy cost to the Complainant. On September 12, 2013, the last day to comply with the Council’s Order, the Custodian submitted certified confirmation of compliance that the Complainant did not respond to her August 30, 2013 letter.

Therefore, the Custodian complied with the Council’s August 27, 2013 Interim Order because she provided the Complainant with an estimated copy cost and submitted certified confirmation of compliance to the Executive Director within the prescribed time frame.

### Knowing & Willful

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 “... [i]f 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 (Id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); 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)).

Although the Custodian unlawfully denied access to the minutes responsive to the Complainant's OPRA request item Nos. 1 and 2, the Complainant's request item Nos. 3 and 4 were invalid and the Custodian timely complied with the Council's Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's August 27, 2013 Interim Order because she provided the Complainant with an estimated copy cost and submitted certified confirmation of compliance to the Executive Director within the prescribed time frame.
  
2. Although the Custodian unlawfully denied access to the minutes responsive to the Complainant's OPRA request item Nos. 1 and 2, the Complainant's request item Nos. 3 and 4 were invalid and the Custodian timely complied with the Council's Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Brandon D. Minde, Esq.  
Executive Director

September 17, 2013



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

RICHARD E. CONSTABLE, III  
Commissioner

INTERIM ORDER

August 27, 2013 Government Records Council Meeting

Darryl W. Simpkins  
Complainant

Complaint No. 2012-259

v.

Township of Rockaway (Morris)  
Custodian of Record

At the August 27, 2013 public meeting, the Government Records Council (“Council”) considered the August 20, 2013 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. The Custodian’s response to the Complainant’s OPRA request item Nos. 1 and 2 was insufficient because the Custodian failed to specifically acknowledge the Complainant’s preferred method of delivery (via U.S. mail) and provide an estimated cost accordingly. N.J.S.A. 47:1A-5(g); O’Shea v. Township of Fredon (Sussex), GRC Complaint No. 2007-251 (February 2008); Paff v. Borough of Sussex (Sussex), GRC Complaint No. 2008-38 (July 2008).
2. The Custodian has unlawfully denied access to the records responsive to the Complainant’s OPRA request item Nos. 1 and 2 because although she granted access to same, she failed to provide the Complainant with an estimated copy cost for the records. N.J.S.A. 47:1A-6. The Custodian must thus provide the copy cost for those records to the Complainant and disclose same upon receipt of payment. *See* Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006); Ortiz v. New Jersey Department of Corrections, GRC Complaint No. 2007-101 (November 2008). The Custodian must also indicate if responsive minutes do not exist or have not been approved and are thus not available for disclosure.
3. **The Custodian shall calculate the copy cost in accordance with item 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 with any appropriate redactions and a detailed document index explaining the lawful basis for any such redaction upon the Complainant’s payment of the copy cost, 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 the Complainant fails to pay the appropriate copying cost 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. Because the Complainant's request item Nos. 3 and 4 fail to identify the specific subject and identifiable individuals, said requests are invalid and the Custodian has not unlawfully denied access to same. Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (March 2010); Armenti v. Robbinsville Board of Education (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011); Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012); Wolosky v. Township of Randolph (Morris), GRC Complaint No. 2010-244 (February 2012).
5. 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 27th Day of August, 2013

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: August 28, 2013**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
August 27, 2013 Council Meeting**

**Darryl W. Simpkins<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-259**

v.

**Township of Rockaway (Morris)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via U.S. mail of:

1. All minutes from planning board hearings leading up to resolutions for block 20001, lots 5.01, 5.05 and 7 TILCON New York Inc., dated December 1, 2008, April 17, 2009, December 20, 2011, April 23, 2012 and February 6, 2012.
2. All minutes from the meeting of the Township of Rockaway (“Township”) where the Notices of violation included in the Custodian’s OPRA responses were discussed.
3. All correspondence sent or received to/from TILCON or the Morris County Construction Board of Appeals relating to the Notices of violation.

**Custodian of Record:** Susan Best

**Request Received by Custodian:** June 4, 2012

**Response Made by Custodian:** June 5, 2012

**GRC Complaint Received:** September 6, 2012

**Background<sup>3</sup>**

**Request and Response:**

On June 1, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian. On June 5, 2012, the Custodian’s Counsel responded on behalf of the Custodian denying access to said OPRA request as broad and unclear and seeking clarification of the Complainant’s OPRA request. On June 14, 2012, the Complainant clarified his OPRA request as follows:

1. All minutes of Township planning board hearings from March 1, 2007 to February 6, 2012.
2. All minutes of Township Council meetings from August 8, 2006 to present.

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

<sup>2</sup> Represented by John M. Iacofano, Esq. (Morristown, NJ).

<sup>3</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

3. All correspondence the Township or any of its departments or divisions sent to TILCON from August 18, 2006 to present.
4. All correspondence the Township or any of its departments or divisions received from TILCON from August 18, 2006 to present.

On June 20, 2012, the Custodian's Counsel granted access to request item Nos. 1 and 2 and denied access to request item Nos. 3 and 4 as overly broad. The Custodian requested that the Complainant advise whether he wished to review the records or obtain copies of same, at which point the Custodian would provide the Complainant with appropriate copy costs.

On July 20, 2012, the Complainant requested that Counsel advise as to the estimated cost for disclosure of the records responsive to request item Nos. 1 and 2. The Complainant also amended request item Nos. 3 and 4 to seek "... all correspondence ..." between TILCON and the following departments or divisions from August 18, 2006 to present:

1. Engineering, Planning & Construction.
2. Administration – Purchasing/Bids and the Business Administrator.
3. Township Council.
4. Mayor's Office.
5. Finance, including the Tax Assessor.

On August 6, 2012, the Complainant advised the Custodian's Counsel that he did not receive a response to his July 20, 2012 letter and asks Counsel to contact him. On August 30, 2012, the Complainant submitted another amended OPRA request seeking "... all correspondence between TILCON and the following ..." from August 18, 2006 to the present:

1. Engineering, Planning & Construction.
2. Administration – Purchasing/Bids and any correspondence between TILCON and the Business Administrator.
3. Township Council.
4. Mayor's Office.
5. Finance, including the Tax Assessor.

On September 4, 2012, the Custodian acknowledged receipt of said request and advised that a response would be forthcoming by September 14, 2013. On September 13, 2012, the Custodian denied access to the Complainant's amended OPRA request as broad and unclear because the request would require research.

#### Denial of Access Complaint:

On September 6, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC") contending that the Township failed to provide him with an estimate for records responsive to his June 1, 2012 OPRA request item Nos. 1 and 2 and further failed to address the Complainant's July 20, 2012 clarification.

### Statement of Information:

On October 5, 2012, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s April 20, 2012 and June 1, 2012 OPRA requests on April 23, 2013 and June 4, 2012 respectively.

The Custodian certifies that she provided 22 records to the Complainant in response to his April 23, 2012 OPRA request but was unable to determine whether any additional records were responsive to said OPRA request. The Custodian asserts that the Complainant’s OPRA request was broad and unclear because it would have required the Custodian to perform research in order to locate responsive records. Specifically, the Custodian would be required to search through files for six (6) departments or divisions for a six (6) year period in order to determine what correspondence might be responsive to the Complainant’s request items.

### Analysis<sup>4</sup>

#### Insufficient Response

In O’Shea v. Township of Fredon (Sussex), GRC Complaint No. 2007-251 (February 2008), the complainant contended that the custodian’s response to his OPRA request was insufficient because it did not address his preference for e-mailed records over paper copies via regular mail. The Council held that “[a]ccording to [the] language of N.J.S.A. 47:1A-5(g), the Custodian was given two ways to comply and should have, therefore, responded acknowledging the Complainant’s preferences with a sufficient response for each.” The Council further held that “the Custodian’s response is insufficient because she failed to specifically address the Complainant’s preference for receipt of records.” In Paff v. Borough of Sussex (Sussex), GRC Complaint No. 2008-38 (July 2008), the complainant requested that the records be provided by e-mail or facsimile, and the custodian failed to address the method of delivery. In Paff, despite the fact the custodian responded in writing granting access to the requested record in a timely manner, the Council determined that the “Custodian’s response [was] insufficient because she failed to specifically address the Complainant’s preference for receipt of the records...[t]herefore, the Custodian...violated OPRA...”

Here, the Custodian responded to the Complainant’s OPRA request granting access to OPRA request item Nos. 1 and 2 and asked the Complainant to confirm whether he wanted to inspect the record or receive an estimated cost for copies. This is notwithstanding the fact that the Complainant identified his method of delivery on the OPRA request form as via U.S. mail and also included a line in his request stating “[k]indly advise me of the costs of reproduction.” Moreover, the Custodian provides no argument in the SOI as to why she failed to provide the Complainant with an estimated copy cost. Thereafter, the Complainant sought an estimated cost on July 20, 2012; however, the Custodian still did not provide the Complainant with an estimated cost. Ultimately, the Custodian failed to acknowledge the Complainant’s preferred method of delivery and thus her response was insufficient.

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<sup>4</sup> There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

Therefore, the Custodian's response to the Complainant's OPRA request item Nos. 1 and 2 was insufficient because the Custodian failed to specifically acknowledge the Complainant's preferred method of delivery (via U.S. mail) and provide an estimated cost accordingly. N.J.S.A. 47:1A-5(g); O'Shea, supra; Paff, supra.

Moreover, the Custodian has unlawfully denied access to the records responsive to the Complainant's OPRA request item Nos. 1 and 2 because although she granted access to same, she failed to provide the Complainant with an estimated copy cost for the records. N.J.S.A. 47:1A-6. The Custodian must thus provide the copy cost for those records to the Complainant and disclose same upon receipt of payment. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006); Ortiz v. New Jersey Department of Corrections, GRC Complaint No. 2007-101 (November 2008). The Custodian must also indicate if responsive minutes do not exist or have not been approved and are thus not available for disclosure.

### **Validity of OPRA request**

Regarding item Nos. 3 and 4, the New Jersey Superior Court has held that “[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records ‘readily accessible for inspection, copying, or examination.’* N.J.S.A. 47:1A-1.” MAG, supra, at 546 (emphasis added). The Court reasoned that:

“[m]ost significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.” *Id.* at 549 (emphasis added).

The Court further held that “[u]nder OPRA, *agencies are required to disclose only ‘identifiable’ government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files.*” *Id.* (emphasis added). See also Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>5</sup> New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Moreover, the test under MAG then is whether a requested record is a specifically identifiable government record. If it is, the record is disclosable barring any exemptions to disclosure contained in OPRA. The Council established criteria deemed necessary to specifically

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<sup>5</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

identify an e-mail communication in Sandoval v. NJ State Parole Board, GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007). In Sandoval, the complainant requested “e-mail ... between [two individuals] from April 1, 2005 through June 23, 2006 [using seventeen (17) different keywords].” The custodian denied the request, claiming that it was overly broad. The Council held that:

The Complainant in the complaint now before the GRC requested specific e-mails *by recipient, by date range and by content*. Based on that information, the Custodian has identified [numerous] e-mails which fit the specific recipient and date range criteria Complainant requested.

*Id.* at 16 (Emphasis added).

In Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (March 2010), the Council examined what constitutes a valid request for e-mails under OPRA. The Council determined that:

*“In accord with MAG, supra, and its progeny, in order to specifically identify an e-mail, OPRA requests must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof.”*

*Id.* at 5 (emphasis in original).

The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. *See* Armenti v. Robbinsville Board of Education (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011).

Additionally, in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), the Court noted that plaintiff's request was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information, namely, EZ-Pass benefits provided to Port Authority retirees. The Court determined that the request was limited to particularized, identifiable government records, namely, correspondence with another government entity, rather than information generally. Moreover, in Wolosky v. Township of Randolph (Morris), GRC Complaint No. 2010-244 (February 2012), the complainant sought access to “copies of every e-mail sent or received by the Municipal Clerk's office to or from every other Municipal Clerk in Morris County regarding the complainant, his OPRA request and/or other OPRA matters from June 29, 2010 through August 23, 2010.” The Council rendered the complainant's request invalid because it identified a class of recipients rather than a specific individual recipient or recipients.

Here, the Complainant's OPRA request item Nos. 3 and 4 sought correspondence between TILCON and several departments within the Township over a defined period of time. However, unlike in Brandes, supra, the Complainant here did not include a particular subject. Additionally, similar to the request in Wolosky, supra, the Complainant identified departments

or divisions but did not reasonably identify individual recipients save the Tax Assessor and Business Administrator.

Therefore, because the Complainant's request item Nos. 3 and 4 fail to identify the specific subject and identifiable individuals, said requests are invalid and the Custodian has not unlawfully denied access to same. Elcavage, supra; Armenti, supra; Brandes, supra; Wolosky, supra.

### **Knowing & Willful**

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. The Custodian's response to the Complainant's OPRA request item Nos. 1 and 2 was insufficient because the Custodian failed to specifically acknowledge the Complainant's preferred method of delivery (via U.S. mail) and provide an estimated cost accordingly. N.J.S.A. 47:1A-5(g); O'Shea v. Township of Fredon (Sussex), GRC Complaint No. 2007-251 (February 2008); Paff v. Borough of Sussex (Sussex), GRC Complaint No. 2008-38 (July 2008).
2. The Custodian has unlawfully denied access to the records responsive to the Complainant's OPRA request item Nos. 1 and 2 because although she granted access to same, she failed to provide the Complainant with an estimated copy cost for the records. N.J.S.A. 47:1A-6. The Custodian must thus provide the copy cost for those records to the Complainant and disclose same upon receipt of payment. *See* Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006); Ortiz v. New Jersey Department of Corrections, GRC Complaint No. 2007-101 (November 2008). The Custodian must also indicate if responsive minutes do not exist or have not been approved and are thus not available for disclosure.
3. **The Custodian shall calculate the copy cost in accordance with item 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 with any appropriate redactions and a detailed document index explaining the lawful basis for any such redaction upon the Complainant's payment of the copy cost, 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 the Complainant fails to pay the appropriate copying cost 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. Because the Complainant's request item Nos. 3 and 4 fail to identify the specific subject and identifiable individuals, said requests are invalid and the Custodian has not unlawfully denied access to same. Elcavage v. West Milford Twp., GRC Complaint Nos. 2009-07 and 2009-08 (March 2010); Armenti v. Robbinsville Board of Education (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011); Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012); Wolosky v. Township of Randolph (Morris), GRC Complaint No. 2010-244 (February 2012).
5. 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.

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Approved By: Brandon D. Minde, Esq.  
Executive Director

August 20, 2013