



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

February 25, 2014 Government Records Council Meeting

Charles G. Lovallo
Complainant

Complaint No. 2013-185

v.

Essex County College
Custodian of Record

At the February 25, 2014 public meeting, the Government Records Council (“Council”) considered the February 18, 2014 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 January 28, 2014 Interim Order because the Custodian in a timely manner delivered to the Council in a sealed envelope nine (9) copies of the requested unredacted records and a legal certification in accordance with R. 1:4-4, that the records provided are the records requested by the Council for the *in camera* inspection.
2. The *in camera* examination set forth in the above table reveals the Custodian has lawfully denied access to the requested record pursuant to N.J.S.A. 47:1A-6.
3. Because the results of the *in camera* examination revealed that the Custodian lawfully denied access to the requested record as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1, the Custodian did not knowingly and willfully violate OPRA and unreasonably deny 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 25th Day of February, 2014

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: February 26, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director
February 25, 2014 Council Meeting**

**Charles G. Lovallo¹
Complainant**

GRC Complaint No. 2013-185

v.

**Essex County College²
Custodial Agency**

Records Relevant to Complaint: Copies of all reports submitted to the Essex County College Board of Trustees by the Law Firm of Nowell Amoroso Klein Bierman, P.A. regarding the complaints filed by Charles Lovallo about Joyce Harley.

Custodian of Record: Julette Cherrington³
Request Received by Custodian: June 17, 2013
Response Made by Custodian: June 18, 2013
GRC Complaint Received: June 24, 2013

Records Submitted for *In Camera* Examination: Report titled “Investigation into Complaint of Charles Lovallo against Joyce Wilson Harley” dated May 10, 2013, prepared by William C. Soukas, Esq. of Nowell Amoroso Klein Bierman, P.A.

Background

January 28, 2014 Council Meeting:

At its January 28, 2014 public meeting, the Government Records Council (“Council”) considered the January 21, 2014 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 GRC must conduct an *in camera* examination of the record responsive to the request, which is a final investigation report concerning the Complainant’s November 2012 formal grievance prepared by William Soukas, Esq. of Nowell Amoroso Klein Bierman, to determine the validity of the Custodian’s assertion that the record is not subject to disclosure as a government record. *See Paff v. NJ Dep’t of Labor, Bd. of Review*, 379 N.J. Super. 346 (App. Div. 2005), and N.J.S.A. 47:1A-1.1.

¹ No legal representation listed on record.

² Represented by Rashidah N. Hasan, Esq. (Newark, NJ).

³ Jeannette Roninson was the Custodian at the time of the request.

2. **The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph 1 above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. 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 January 29, 2014, the Council distributed its January 28, 2014 Interim Order to all parties. On February 10, 2014, the Custodian responded to the Council's Interim Order by delivering to the GRC in a sealed envelope nine (9) copies of the requested unredacted records for an *in camera* inspection.

On February 10, 2014, the GRC e-mailed the Custodian's Counsel asking the Custodian to provide a supplemental certification clarifying the number of business days the college was open between the date of receipt of the Council's Order and February 10, 2014. The GRC also asked the Custodian to certify whether the records she had provided were the records requested by the Council for the *in camera* inspection.

On February 11, 2014, the Custodian forwarded to the GRC a legal certification in accordance with N.J. Court Rule 1:4-4, that the records she had provided are the records requested by the Council for the *in camera* inspection. The Custodian also certified that she received the Council's Order on February 4, 2014, and that the college was closed on February 5, 2014 due to inclement weather.

Analysis

Compliance

On January 28, 2014, the Council ordered the above-referenced compliance. On January 29, 2014, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. The Custodian certified that she received the Interim Order on February 4, 2014, and that the college was closed due to inclement weather on February 5, 2014. The Custodian delivered to the GRC in a sealed envelope nine (9) copies of the requested unredacted records for an *in camera* inspection on February 10, 2014, the third (3rd) business day following receipt of the Order. The Custodian forwarded another certification to the GRC on February 11, 2014, the fourth (4th) business day following receipt of the Order, that the records she provided are the records requested by the Council for the *in camera* inspection.

Therefore, the Custodian complied with the Council's January 28, 2014 Interim Order because the Custodian in a timely manner delivered to the Council in a sealed envelope nine (9) copies of the requested unredacted records and a legal certification in accordance with R. 1:4-4, that the records provided are the records requested by the Council for the *in camera* inspection.

Unlawful Denial of Access

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. N.J.S.A. 47:1A-6.

The Custodian asserted that the record is exempt from disclosure because (1) the record is advisory, consultative or deliberative ("ACD") material; (2) the record is within the attorney-client privilege; and (3) the record was generated by or on behalf of a public employer in connection with a grievance filed by or against an individual. Conversely, the Complainant asserts that he was unlawfully denied access to the requested report.

OPRA excludes from the definition of a government record "... inter-agency or intra-agency advisory, consultative or deliberative material." N.J.S.A. 47:1A-1.1. It is evident that this phrase is intended to exclude from the definition of a government record the types of documents that are the subject of the "deliberative process privilege."

In O'Shea v. West Milford BOE, GRC Complaint No. 2004-93 (April 2006), the Council stated that:

[N]either the statute nor the courts have defined the terms ... "advisory, consultative, or deliberative" in the context of the public records law. The Council looks to an analogous concept, the deliberative process privilege, for guidance in the implementation of OPRA's ACD exemption. Both the ACD exemption and the deliberative process privilege enable a governmental entity to shield from disclosure material that is pre-decisional and deliberative in nature. Deliberative material contains opinions, recommendations, or advice about agency policies. In Re the Liquidation of Integrity Ins. Co., 165 N.J. 75, 88 (2000); In re Readoption With Amendments of Death Penalty Regulations, 182 N.J.149 (App. Div. 2004).

The deliberative process privilege is a doctrine that permits government agencies to withhold documents that reflect advisory opinions, recommendations and deliberations submitted as part of a process by which governmental decisions and policies are formulated. NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975). Specifically, the New Jersey Supreme Court has ruled that a record that contains or involves factual components is entitled to deliberative-process protection under the exemption in OPRA when it was used in the decision-making process *and* its disclosure would reveal deliberations that occurred during that process. Educ. Law Ctr. v. NJ Dep't of Educ., 198 N.J. 274 (2009). This long-recognized privilege is rooted in the concept that the sovereign has an interest in protecting the integrity of its deliberations. The earliest federal

case adopting the privilege is Kaiser Alum. & Chem. Corp. v. United States, 157 F. Supp. 939 (1958). The privilege and its rationale were subsequently adopted by the federal district courts and circuit courts of appeal. United States v. Farley, 11 F.3d 1385, 1389 (7th Cir.1993).

The deliberative process privilege was discussed at length in Integrity at 84-88. There, the Court addressed the question of whether the Commissioner of Insurance, acting in the capacity of liquidator of a regulated entity, could protect certain records from disclosure which she claimed contained opinions, recommendations or advice regarding agency policy. Id. at 81. The Court adopted a qualified deliberative process privilege based upon the holding of McClain v. Coll. Hosp., 99 N.J. 346 (1985). Id. at 88. In doing so, the Court noted that:

A document must meet two requirements for the deliberative process privilege to apply. First, it must have been generated before the adoption of an agency's policy or decision. In other words, it must be pre-decisional. ... Second, the document must be deliberative in nature, containing opinions, recommendations, or advice about agency policies. ... Purely factual material that does not reflect deliberative processes is not protected. ... Once the government demonstrates that the subject materials meet those threshold requirements, the privilege comes into play. In such circumstances, the government's interest in candor is the “preponderating policy” and, prior to considering specific questions of application, the balance is said to have been struck in favor of non-disclosure.

Id. at 84-85 (citations omitted).

The Court further set out procedural guidelines based upon those discussed in McClain:

The initial burden falls on the state agency to show that the documents it seeks to shield are pre-decisional and deliberative in nature (containing opinions, recommendations, or advice about agency policies). Once the deliberative nature of the documents is established, there is a presumption against disclosure. The burden then falls on the party seeking discovery to show that his or her compelling or substantial need for the materials overrides the government's interest in non-disclosure. Among the considerations are the importance of the evidence to the movant, its availability from other sources, and the effect of disclosure on frank and independent discussion of contemplated government policies.

Integrity, 165 N.J. at 88 (citing McClain, 99 N.J. at 361-62).

The GRC conducted an *in camera* examination on the submitted record. The results of this examination are set forth in the following table:

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian's Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination⁴
1	Report titled "Investigation into Complaint of Charles Lovallo against Joyce Wilson Harley" dated May 10, 2013, prepared by William C. Soukas, Esq. of Nowell Amoroso Klein Bierman, P.A.	The report is twenty-two (22) pages in length and examines allegations made by Charles Lovallo against Joyce Wilson Harley.	The record is exempt from disclosure under OPRA as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>	The report contains recommendations and advice and, as such, is exempt from disclosure in its entirety as advisory, consultative or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

Because the Custodian lawfully denied the Complainant access to the requested record in its entirety as ACD material pursuant to N.J.S.A. 47:1A-1.1, it is unnecessary for the Council to determine if the record is also exempt from disclosure because the record is within the attorney-client privilege or the record was generated by or on behalf of a public employer in connection with a grievance filed by or against an individual.

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

⁴ **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

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 (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)).

Here, because the results of the *in camera* examination revealed that the Custodian lawfully denied access to the requested record as ACD material pursuant to N.J.S.A. 47:1A-1.1, the Custodian did not knowingly and willfully violate OPRA and unreasonably deny 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 January 28, 2014 Interim Order because the Custodian in a timely manner delivered to the Council in a sealed envelope nine (9) copies of the requested unredacted records and a legal certification in accordance with R. 1:4-4, that the records provided are the records requested by the Council for the *in camera* inspection.
2. The *in camera* examination set forth in the above table reveals the Custodian has lawfully denied access to the requested record pursuant to N.J.S.A. 47:1A-6.
3. Because the results of the *in camera* examination revealed that the Custodian lawfully denied access to the requested record as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1, the Custodian did not knowingly and willfully violate OPRA and unreasonably deny access under the totality of the circumstances.

Prepared By: John E. Stewart, Esq.

Approved By: Dawn R. SanFilippo, Esq.
Senior Counsel

February 18, 2014



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

January 28, 2014 Government Records Council Meeting

Charles G. Lovallo
Complainant

Complaint No. 2013-185

v.

Essex County College
Custodian of Record

At the January 28, 2014 public meeting, the Government Records Council ("Council") considered the January 21, 2014 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 GRC must conduct an *in camera* examination of the record responsive to the request, which is a final investigation report concerning the Complainant's November 2012 formal grievance prepared by William Soukas, Esq. of Nowell Amoroso Klein Bierman, to determine the validity of the Custodian's assertion that the record is not subject to disclosure as a government record. See Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), and N.J.S.A. 47:1A-1.1.
2. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph 1 above), a document or redaction index², as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,³ that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. 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.

¹ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

² The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

³ "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."

Interim Order Rendered by the
Government Records Council
On The 28th Day of January, 2014

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: January 29, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 28, 2014 Council Meeting**

**Charles G. Lovallo¹
Complainant**

GRC Complaint No. 2013-185

v.

**Essex County College²
Custodial Agency**

Records Relevant to Complaint: Copies of all reports submitted to the Essex County College Board of Trustees by the Law Firm of Nowell Amoroso Klein Bierman, P.A. regarding the complaints filed by Charles Lovallo about Joyce Harley.

Custodian of Record: Jeannette Roninson
Request Received by Custodian: June 17, 2013
Response Made by Custodian: June 18, 2013
GRC Complaint Received: June 24, 2013

Background³

Request and Response:

On June 17, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 18, 2013, the first (1st) business day following receipt of said request, the Custodian responded in writing informing the Complainant that the record responsive to the Complainant’s request is an investigation report finalized by William Soukas, Esq. of Nowell Amoroso Klein Bierman of the Complainant’s November 2012 formal grievance. The Custodian stated that the request is denied because (1) the record is within the attorney-client privilege; (2) the record is advisory, consultative or deliberative material; and (3) the record was generated by or on behalf of a public employer in connection with a grievance filed by or against an individual.

Denial of Access Complaint:

On June 24, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that on August 15, 2012, in

¹ No legal representation listed on record.

² Represented by Rashidah N. Hasan, Esq. (Newark, NJ).

³ 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.

his capacity as an employee of Essex County College he filed a written complaint regarding a hostile work environment created by another employee. The Complainant further asserts that the Board of Trustees hired a law firm to investigate the complaint, and on June 6, 2013, the Human Resources Director e-mailed him an invitation to discuss the firm's investigative findings. The Complainant states that on June 14, 2013, he filed an OPRA request for the firm's findings but on June 18, 2013, the Custodian denied the request.

Statement of Information:

On June 25, 2013, the GRC sent the Custodian a request for the Statement of Information ("SOI"). On that same date the Custodian's Counsel acknowledged receipt of the request for the SOI and asked for an extension of time until July 8, 2013, for the Custodian to submit the SOI; the GRC granted Counsel's request. The Custodian thereafter failed to submit the SOI.

Analysis

Unlawful Denial of Access

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 Custodian responded to the Complainant's request by informing him that the record she determined to be responsive to his request was a final investigation report concerning the Complainant's November 2012 formal grievance prepared by William Soukas, Esq. of Nowell Amoroso Klein Bierman. The Custodian denied the Complainant access to the report because she asserted the record was exempt as (1) a record within the attorney-client privilege; and/or (2) ACD material; and/or (3) generated by or on behalf of a public employer in connection with a grievance filed by or against an individual.

OPRA specifically exempts ACD material from its definition of a government record. N.J.S.A. 47:1A-1.1. OPRA further provides that "[a] government record shall not include...any record within the attorney-client privilege...[and] information generated by or on behalf of public employers or public employees in connection with...collective negotiations, including documents and statements of strategy or negotiating position" N.J.S.A. 47:1A-1.1.

In Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the Complainant appealed a final decision of the GRC in which the GRC dismissed the complaint by accepting the Custodian's legal conclusion for the denial of access without further review.⁴ The Court stated that:

"OPRA contemplates the GRC's meaningful review of the basis for an agency's decision to withhold government records ... When the GRC decides to proceed

⁴ See Paff v. NJ Department of Labor, Board of Review, GRC Complaint No. 2003-128 (October 2005).

with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers.”

The Court also stated that:

“[t]he statute also contemplates the GRC’s *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the ‘Open Public Meetings Act,’ N.J.S.A. 10:4-6 to -21, it also provides that the GRC ‘may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.’ N.J.S.A. 47:1A-7f. This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.”

Further, the Court stated that:

“[w]e hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal ... There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC’s obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7f, which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.” Id.

Accordingly, the GRC must conduct an *in camera* examination of the record responsive to the request, which is a final investigation report concerning the Complainant’s November 2012 formal grievance prepared by William Soukas, Esq. of Nowell Amoroso Klein Bierman, to determine the validity of the Custodian’s assertion that the record is not subject to disclosure as a government record. *See Paff*, 379 N.J. Super. 346 and N.J.S.A. 47:1A-1.1.

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 GRC must conduct an *in camera* examination of the record responsive to the request, which is a final investigation report concerning the Complainant’s November 2012 formal grievance prepared by William Soukas, Esq. of Nowell Amoroso Klein Bierman, to determine the validity of the Custodian’s assertion that the record is not

subject to disclosure as a government record. See Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), and N.J.S.A. 47:1A-1.1.

2. **The Custodian must deliver⁵ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph 1 above), a document or redaction index⁶, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,⁷ that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. 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, Esq.

Approved By: Dawn R. SanFilippo, Esq.
Senior Counsel

January 21, 2014

⁵ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

⁶ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁷ "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."