



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**October 25, 2016 Government Records Council Meeting**

Michael L. Shelton  
Complainant

Complaint No. 2014-183

v.

Manasquan Public School District (Monmouth)  
Custodian of Record

At the October 25, 2016 public meeting, the Government Records Council (“Council”) considered the September 22, 2016 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s April 28, 2015 Interim Order because the Custodian in a timely manner forwarded to the Executive Director the records responsive to items numbered 3, 4, 5, and 7 through 14 for *in camera* examination, together with a certified confirmation of compliance averring that the records he provided are the records requested by the Council for the *in camera* examination.
2. The *in camera* examination reveals that the responsive documents are reflective of the deliberative process and are exempt from access as advisory, consultative, or deliberative material because they contain recommendations and proposed appropriations for the District’s 2014/2015 budget generated before the District made a decision regarding said budget. Thus, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-6. See In Re the Liquidation of Integrity Ins. Co., 165 N.J. 75 (2000) and Educ. Law Ctr. v. N.J. Dep’t of Educ., 198 N.J. 274, 280-81 (2009). See also Hobbs v. Twp. of Hillside (Union), GRC Complaint No. 2009-286 (November 2010).
3. The Custodian’s response was insufficient and he unlawfully denied access pursuant to N.J.S.A. 47:1A-5(e) by failing to disclose immediately the requested budget. However, the Custodian did disclose the budget to the Complainant on April 25, 2014, fully complied in a timely manner with the Council’s April 28, 2015 Interim Order, and lawfully denied access to all records responsive to items numbered 3, 4, 5, and 7 through 14. Additionally, the evidence of record does not indicate that the Custodian’s actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian’s actions did 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 25<sup>th</sup> Day of October, 2016

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: October 27, 2016**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director  
October 25, 2016 Council Meeting**

**Michael L. Shelton**<sup>1</sup>  
**Complainant**

**GRC Complaint No. 2014-183**

v.

**Manasquan School District (Monmouth)**<sup>2</sup>  
**Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of the complete 2014-2015 budget submission as delivered to the Executive County Superintendent, with any and all backup and supporting documentation, including administrative departmental requests, as well as any and all versions of produced or developed Projection Analysis documents.

**Custodian of Record:** Jesse Place

**Request Received by Custodian:** April 10, 2014

**Response Made by Custodian:** April 10, 2014<sup>3</sup>

**GRC Complaint Received:** April 25, 2014

**Records Submitted for *In Camera* Examination:** All records responsive to items numbered 3, 4, 5, and 7 through 14 in the table set forth in the Conclusions and Recommendations, incorporated within the Council's April 28, 2015 Interim Order.

**Background**

**April 28, 2015 Council Meeting:**

At its April 28, 2015 public meeting, the Government Records Council ("Council") considered the April 21, 2015 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 April 10, 2014, response was insufficient because he failed to address the Complainant's preferred method of delivery. N.J.S.A. 47:1A-5(g); O'Shea v. Twp. of Fredon (Sussex), GRC Complaint Number 2007-251 (February

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

<sup>2</sup> Represented by Douglas J. Kovats, Esq., of Kenney, Gross, Kovats & Parton (Red Bank, NJ).

<sup>3</sup> The Custodian certifies in the Statement of Information that he responded to the request on April 25, 2014; however, the evidence of record reveals that the Custodian first responded to the request in writing on April 10, 2014.

2008); Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008).

2. By failing to immediately disclose the budget contained in the application submitted to the Executive County Superintendent electronically, or provide a date certain on which he would disclose same, the Custodian violated OPRA's immediate access provision. N.J.S.A. 47:1A-5(e). See Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013). However, the GRC declines to order disclosure of the budget because the Custodian certified that he provided same to the Complainant on April 25, 2014.
3. Pursuant to Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the records responsive to items numbered 3, 4, 5, and 7 through 14 in the above table to determine the validity of the Custodian's assertion that they were lawfully denied in their entirety as ACD material exempt from access pursuant to N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see paragraph #3 above), nine (9) copies of the redacted records, a document or redaction index, as well as a legal certification in accordance with N.J. Court Rule 1:4-4, that the records provided are the records 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.**
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 April 29, 2015, the Council distributed its Interim Order to all parties. On May 4, 2015, the Custodian responded to the Council's Interim Order by delivering to the GRC in a sealed envelope nine (9) copies of the records responsive to items numbered 3, 4, 5, and 7 through 14, together with a legal certification in accordance with N.J. Court Rule 1:4-4, that the records provided are the records requested by the Council for the *in camera* examination.<sup>4</sup>

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<sup>4</sup> A document index was not provided; however, same was not necessary because in the certification of compliance the Custodian referenced the table of responsive records, which was set forth in the Conclusions and Recommendations incorporated within the Council's April 28, 2015 Interim Order. The table contains the description of each record as well as the legal explanation for denial.

## Analysis

### Compliance

On April 28, 2015, the Council ordered the above-referenced compliance. On April 29, 2015, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Therefore, compliance was due on or before May 6, 2015. On May 4, 2015, the third (3<sup>rd</sup>) business day after the Custodian received the Interim Order, he delivered to the Executive Director in a sealed envelope nine (9) copies of the records responsive to items numbered 3, 4, 5, and 7 through 14 for *in camera* examination, together with a certified confirmation of compliance wherein he stated that the records provided are the records requested by the Council for the *in camera* examination.

Therefore, the Custodian complied with the Council's April 28, 2015 Interim Order because the Custodian in a timely manner forwarded to the Executive Director the records responsive to items numbered 3, 4, 5, and 7 through 14 for *in camera* examination, together with a certified confirmation of compliance averring that the records he provided are the records requested by the Council for the *in camera* examination.

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

<b>Record Number<sup>5</sup></b>	<b>Record Name</b>	<b>Description of Record</b>	<b>Custodian's Explanation/ Citation for Non-disclosure</b>
3	Administrative Departmental Budget Requests (228 pages, exclusive of cover page —several duplicate pages noted).	These are 2014/2015 budget requests and/or proposals submitted from various Departments. Although the formats contain slight differences, the general format is a summary sheet followed by the detail pages. One Department	The records were not submitted to the Executive County Superintendent; they constitute pre-decisional material used to assist District administration in its budget decision-

<sup>5</sup> The record numbers listed here mirror those enumerated records in the Council's April 28, 2015 Interim Order that were directed to be delivered for *in camera* examination.

		also included projection analysis documents, which contain budget item descriptions with the current appropriation amounts, the proposed amounts, and the change between the two shown as a percentage. The purpose of this record is to present to the decision maker(s) what should be done or is needed.	making process and are exempt as advisory, consultative, and deliberative (“ACD”) material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 NJ 75 (2006); <u>In Re Adoption of N.J.A.C. 10A:23</u> , 367 N.J. Super. 61, 73-74 (App. Div.), certif. den. 182 NJ 149.
4	Manasquan Board of Education Projection Analysis for 2014-2015 Budget dated March 24, 2014 (95 pages, exclusive of cover page).	These are projection analysis documents for the District dated March 1, 2014, which contain budget item descriptions with the current appropriation amounts, proposed amounts, and the change between the two shown as a percentage. The purpose of this record is to present to the decision maker(s) what should be done or is needed.	See Custodian’s explanation for Item No. 3.
5	Manasquan Board of Education Projection Analysis for 2014-2015 Budget dated March 4, 2014 (95 pages, exclusive of cover page).	These are projection analysis documents for the District dated February 1, 2014, which contain budget item descriptions with the current appropriation amounts, the proposed amounts, and the change between the two shown as a percentage. The purpose of this record is to present to the decision maker(s) what should be done or is needed.	See Custodian’s explanation for Item No. 3.
7	Manasquan Board of Education Projection Analysis for 2014-2015 Budget dated March 24, 2014 (95 pages, exclusive of cover page).	This is a near duplicate of Item No. 4 with some minor modifications (e.g., the Grand Totals percentage change decreased from 0.87% to 0.85%).	See Custodian’s explanation for Item No. 3.

8	Manasquan Board of Education Projection Analysis for 2014-2015 Budget dated March 4, 2014 (95 pages, exclusive of cover page).	This is a near duplicate of Item No. 5 with some minor modifications (e.g., adjustments in line item proposals reflecting a current total appropriation decrease of \$956,105.00.)	See Custodian's explanation for Item No. 3.
9	Manasquan Board of Education Projection Analysis for 2014-2015 Budget dated February 28, 2014 (95 pages, exclusive of cover page).	These are projection analysis documents for the District dated February 1, 2014, which contain budget item descriptions with the current appropriation amounts, the proposed amounts, and the change between the two shown as a percentage. The purpose of this record is to present to the decision maker(s) what should be done or is needed.	See Custodian's explanation for Item No. 3.
10	Manasquan Board of Education Projection Analysis for 2014-2015 Budget dated February 6, 2014 (81 pages, exclusive of cover page).	These are projection analysis documents for the District dated January 1, 2014, which contain budget item descriptions with the current appropriation amounts, the proposed amounts, and the change between the two shown as a percentage. The purpose of this record is to present to the decision maker(s) what should be done or is needed. There are several pages which contain handwritten notes and calculations adjacent to the printed entries.	See Custodian's explanation for Item No. 3.
11	Manasquan Board of Education Projection Analysis for 2014-2015 Budget dated January 30, 2014 (84 pages, exclusive of cover page).	These are projection analysis documents for the District dated January 1, 2014, which contain budget item descriptions with the current appropriation amounts, the proposed amounts, and the change between the two shown as a percentage. The purpose of this record is to present to the decision maker(s) what should be done or is	See Custodian's explanation for Item No. 3.

		needed. There are several pages which contain handwritten notations adjacent to the printed entries.	
12	Manasquan Board of Education Projection Analysis for 2014-2015 Budget dated January 20, 2014 (83 pages, exclusive of cover page).	These are projection analysis documents for the District dated January 1, 2014, which contain budget item descriptions with the current appropriation amounts, the proposed amounts, and the change between the two shown as a percentage. The purpose of this record is to present to the decision maker(s) what should be done or is needed. The record contains handwritten notations, corrections and adjustments throughout.	See Custodian's explanation for Item No. 3.
13	Manasquan Board of Education Projection Analysis for 2014-2015 Budget dated December 18, 2013 (117 pages, exclusive of cover page).	These are projection analysis documents for the District dated December 1, 2013, which contain budget item descriptions with the current appropriation amounts. Most items do not reflect a proposed change with the attendant percentage. Grand totals are not contained in this record. The purpose of this record is to present to the decision maker(s) what should be done or is needed. The record contains handwritten notations throughout.	See Custodian's explanation for Item No. 3.
14	Manasquan Board of Education Projection Analysis for 2014-2015 Budget dated April 11, 2014 (95 pages, exclusive of cover page).	These are projection analysis documents for the District dated February 1, 2014, which contain budget item descriptions with the current appropriation amounts, the proposed amounts, and the change between the two shown as a percentage. The purpose of this record is to present to the decision maker(s) what should be done or is needed.	See Custodian's explanation for Item No. 3.



		This record also contains a one (1) page “Budget Projection Fund Summary” with handwritten notations.	
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**Results of the *In Camera* Examination**

OPRA provides that:

“...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...[t]he terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.” (Emphasis added.) N.J.S.A. 47:1A-1.1.

In O’Shea v. W. Milford Bd. of Educ., 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 predecisional and deliberative in nature. Deliberative material contains opinions, recommendations, or advice about agency policies.

Id. (citing 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)); *see also* NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975) (stating that deliberative process privilege permits government agencies to withhold documents that reflect advisory opinions, recommendations, and deliberations submitted as part of processes by which governmental decisions and policies are formulated).

The New Jersey Supreme Court ruled that a record containing or involving factual components is entitled to deliberative process protection under OPRA’s ACD exemption when the document was used in the decision-making process and its disclosure would reveal deliberations that occurred during that process. *See* Educ. Law Ctr. v. N.J. Dep’t of Educ., 198 N.J. 274, 280-81 (2009). In Integrity Ins. Co., the Court addressed the question of whether the Commissioner of Insurance could protect certain records from disclosure that she claimed contained opinions, recommendations, or advice regarding agency policy. Id. at 81. The Court adopted a qualified deliberative process privilege, noting 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. . . . Second, the document must be deliberative in nature, containing opinions, recommendations, or advice about agency policies.

Id. at 84-85 (citations omitted).

The Court further set out procedural guidelines:

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.

Id. at 88 (citations omitted).

The Council has previously determined that documents proposed for inclusion within a municipal budget are exempt from disclosure as ACD material. Hobbs v. Twp. of Hillside (Union), GRC Complaint No. 2009-286 (November 2010). In Hobbs, the complainant sought, *inter alia*, copies of each municipal department's proposed 2010 budget. The evidence of record revealed that the requested budgets were used to assist the Mayor in preparing the final municipal budget. The Council, citing Integrity Ins. Co., 165 N.J. 75, determined that the requested proposed departmental budgets were deliberative in nature and thus exempt from disclosure under OPRA.

Here, the Custodian argued that the documents provided for *in camera* examination were not submitted to the Executive County Superintendent; rather they constitute pre-decisional material used to assist District administration in its budget decision-making process.

It is clear from an examination of the submitted records *in camera* that they contain pre-decisional material intended for a decision maker's edification. Item No. 3 contains requests from the various Departments, which constitute recommendations that certain monies be made available to fund various activities. Such recommendations are subject to revision by the decision-maker. Item Nos. 4 and 5, as well as Items Nos. 7 through 14, contain projection analysis documents. Each of the records is a revision of a former record intended as input in the overall budget-making process. Furthermore, several of the records contain handwritten notations, calculations, corrections and adjustments—militating more toward draft documents than a final product.

Here, the records submitted for *in camera* examination meet both prongs of the Integrity Ins. Co. test: (1) the materials were generated before the District adopted its 2014/2015 Budget; and (2) the records comprise recommendations, serving as input in the District’s overall budget-making process. Therefore, while the Custodian has established the deliberative nature of the requested documents, the Complainant has not demonstrated a compelling or substantial need for the records in light of the resulting presumption against disclosure. *See Integrity Ins. Co.*, 165 N.J. at 88.

Accordingly, the responsive documents are reflective of the deliberative process and are exempt from access as ACD material because they contain recommendations and proposed appropriations for the District’s 2014/2015 budget generated before the District made a decision regarding said budget. Thus, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-6. *See Integrity Ins. Co.*, 165 N.J. 75 and Educ. Law Ctr., 198 N.J. 274. *See also Hobbs*, GRC 2009-286.

### **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)).

Here, the Custodian’s response was insufficient and he unlawfully denied access pursuant to N.J.S.A. 47:1A-5(e) by failing to disclose immediately the requested budget. However, the Custodian did disclose the budget to the Complainant on April 25, 2014, fully complied in a timely manner with the Council’s April 28, 2015 Interim Order, and lawfully denied access to all records responsive to items numbered 3, 4, 5, and 7 through 14. Additionally, the evidence of

record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did 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. The Custodian complied with the Council's April 28, 2015 Interim Order because the Custodian in a timely manner forwarded to the Executive Director the records responsive to items numbered 3, 4, 5, and 7 through 14 for *in camera* examination, together with a certified confirmation of compliance averring that the records he provided are the records requested by the Council for the *in camera* examination.
2. The *in camera* examination reveals that the responsive documents are reflective of the deliberative process and are exempt from access as advisory, consultative, or deliberative material because they contain recommendations and proposed appropriations for the District's 2014/2015 budget generated before the District made a decision regarding said budget. Thus, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-6. See In Re the Liquidation of Integrity Ins. Co., 165 N.J. 75 (2000) and Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274, 280-81 (2009). See also Hobbs v. Twp. of Hillside (Union), GRC Complaint No. 2009-286 (November 2010).
3. The Custodian's response was insufficient and he unlawfully denied access pursuant to N.J.S.A. 47:1A-5(e) by failing to disclose immediately the requested budget. However, the Custodian did disclose the budget to the Complainant on April 25, 2014, fully complied in a timely manner with the Council's April 28, 2015 Interim Order, and lawfully denied access to all records responsive to items numbered 3, 4, 5, and 7 through 14. Additionally, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did 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

September 22, 2016<sup>6</sup>

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<sup>6</sup> This complaint could not be adjudicated at the Council's September 29, 2016 meeting because legal counsel needed more time to review the matter and requested that the case be held.



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Acting Commissioner

INTERIM ORDER

April 28, 2015 Government Records Council Meeting

Michael L. Shelton  
Complainant

Complaint No. 2014-183

v.

Manasquan School District (Monmouth)  
Custodian of Record

At the April 28, 2015 public meeting, the Government Records Council (“Council”) considered the April 21, 2015 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 April 10, 2014, response was insufficient because he failed to address the Complainant’s preferred method of delivery. N.J.S.A. 47:1A-5(g); O’Shea v. Twp. of Fredon (Sussex), GRC Complaint Number 2007-251 (February 2008); Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008).
2. By failing to immediately disclose the budget contained in the application submitted to the Executive County Superintendent electronically, or provide a date certain on which he would disclose same, the Custodian violated OPRA’s immediate access provision. N.J.S.A. 47:1A-5(e). See Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013). However, the GRC declines to order disclosure of the budget because the Custodian certified that he provided same to the Complainant on April 25, 2014.
3. Pursuant to Paff v. NJ Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the records responsive to items numbered 3, 4, 5 and 7 through 14 in the above table to determine the validity of the Custodian’s assertion that they were lawfully denied in their entirety as ACD material exempt from access pursuant to N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see paragraph #3 above), nine (9) copies of**

<sup>1</sup> 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.

**the redacted records, a document or redaction index<sup>2</sup>, as well as a legal certification in accordance with N.J. Court Rule 1:4-4,<sup>3</sup> that the records provided are the records 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.**

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 28<sup>th</sup> Day of April, 2015

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: April 29, 2015**

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

<sup>3</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  
April 28, 2015 Council Meeting**

**Michael L. Shelton**<sup>1</sup>  
**Complainant**

**GRC Complaint No. 2014-183**

v.

**Manasquan School District (Monmouth)**<sup>2</sup>  
**Custodial Agency**

**Records Relevant to Complaint:** Electronic copies of the complete 2014-2015 budget submission as delivered to the Executive County Superintendent, with any and all backup and supporting documentation, including administrative departmental requests, as well as any and all versions of produced or developed Projection Analysis documents.

**Custodian of Record:** Jesse Place

**Request Received by Custodian:** April 10, 2014

**Response Made by Custodian:** April 10, 2014<sup>3</sup>

**GRC Complaint Received:** April 25, 2014

**Background**<sup>4</sup>

**Request and Response:**

On April 9, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.<sup>5</sup> The Custodian states that he received the request on April 10, 2014. On April 10, 2014, the same business day the request was received, the Custodian responded in writing to inform the Complainant that “the budget submission and documentation are available for public inspection in the business office at this time.” By e-mail dated April 10, 2014, the Complainant reminded the Custodian that he requested the records be delivered electronically. By reply e-mail dated April 10, 2014, the Custodian informed the Complainant that the records would be delivered electronically.

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

<sup>2</sup> Represented by Douglas J. Kovats, Esq., of Kenney, Gross, Kovats & Parton (Red Bank, NJ).

<sup>3</sup> The Custodian certifies in the Statement of Information that he responded to the request on April 25, 2014; however, the evidence of record reveals that the Custodian first responded to the request in writing on April 10, 2014.

<sup>4</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.

<sup>5</sup> The evidence of record reveals the Complainant’s April 9, 2014, request was forwarded via e-mail at 9:33 p.m. As such, the request would not have been received by the Custodian until the following business day.

On April 24, 2014, the Custodian denied a portion of the Complainant's request, informing him that "...administrative departmental requests, as well as any and all versions of produced or developed Projection Analysis documents...are considered working papers/work product, drafts, etc. and are not OPRA eligible."<sup>6</sup> On April 25, 2014, the Custodian disclosed to the Complainant the "[c]omplete 2014-2015 budget submission as delivered to the [Executive County Superintendent], including any and all backup and supporting documentation." The Custodian further informed the Complainant that the balance of his request was denied for the reasons provided to the Complainant in his e-mail dated April 24, 2014.

#### Denial of Access Complaint:

On April 25, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserts that he filed his request on April 9, 2014, and that the Custodian failed to fulfill the request notwithstanding repeated conversations and/or e-mail communications with several Manasquan School District ("District") officials.<sup>7</sup> The Complainant states that pursuant to N.J.A.C. 6A:23A-8.2, upon submission of a budget application to the Executive County Superintendent, the Custodian has a duty to disclose for public inspection all budget and supporting documentation contained in the budget application and all other documents listed in N.J.A.C. 6A:23A-8.1. The Complainant states that he filed his request well after the District's submission to the Executive County Superintendent. The Complainant emphasizes that he made it clear that he was seeking immediate access records. The Complainant cited to "e. [N.J.S.A. 47:1A-1(e)] **Immediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.**" (Emphasis added by Complainant.)

The Complainant further states that the Custodian stated that he attempted to fulfill the request but that the Custodian has been unable to obtain the requested records from the Business Administrator. The Complainant also states that the Custodian questioned whether the requested records were immediate access records.<sup>8</sup>

The Complainant alleges that the Custodian told him that administrative requests and projection analysis documents used in forming the Executive County Superintendent budget submission would be denied because such records constitute "work product." The Complainant argues that the records are not "work product" because the submission was finalized using the documents, thereby qualifying them as "supporting documentation."

#### Statement of Information:

On May 8, 2014, the Custodian filed a Statement of Information ("SOI"). The Custodian certifies that he received the request on April 10, 2014, and that he forwarded the request to the

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<sup>6</sup> As a point of information, there were other e-mails exchanged between the Complainant and the Custodian between April 10, 2014, and April 24, 2014, regarding the status of the records request.

<sup>7</sup> The Complainant attached to his complaint several e-mails between various District officials.

<sup>8</sup> In the Custodian's e-mail to the Complainant dated April 24, 2015, the Custodian stated, "I do not necessarily agree a non-approved, budget submission is an immediate access item."



Business Administrator because all of the requested records were in the Business Administrator's possession. The Custodian certifies that the following records were determined to be responsive to the Complainant's request:

No.	Description of Record	Date Disclosed	Legal Explanation for Denial
1	2014-2015 unredacted budget submission to the Executive County Superintendent (70 pages)	April 25, 2014	N/A
2	Revised 2014-2015 unredacted budget submission to the Executive County Superintendent (70 pages)	April 25, 2014	N/A
3	Administrative departmental budget requests (222 pages)	N/A	These records were not submitted to the Executive County Superintendent; they constitute pre-decisional material used to assist District administration in its budget decision-making process exempt as advisory, consultative, and deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 NJ 75 (2006).
4	Manasquan Board of Education Projection Analysis for 2014-2015 budget dated March 24, 2014 (95 pages)	N/A	These records were not submitted to the Executive County Superintendent; they constitute pre-decisional material used to assist District administration in its budget decision-making process exempt as advisory, consultative, and deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 NJ 75 (2006).
5	Manasquan Board of Education Projection Analysis for 2014-2015 budget dated March 4, 2014 (95 pages)	N/A	These records were not submitted to the Executive County Superintendent; they constitute pre-decisional material used to assist District administration in its budget decision-making process exempt as advisory, consultative, and deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 NJ 75 (2006).
6	Manasquan Board of	N/A	These records were not submitted to the

	Education Projection Analysis for 2014-2015 budget dated April 11, 2014 (95 pages)		Executive County Superintendent; they constitute pre-decisional material used to assist District administration in its budget decision-making process exempt as advisory, consultative, and deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 NJ 75 (2006).
7	Manasquan Board of Education Projection Analysis for 2014-2015 budget dated March 24, 2014 (95 pages)	N/A	These records were not submitted to the Executive County Superintendent; they constitute pre-decisional material used to assist District administration in its budget decision-making process exempt as advisory, consultative, and deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 NJ 75 (2006).
8	Manasquan Board of Education Projection Analysis for 2014-2015 budget dated March 4, 2014 (95 pages)	N/A	These records were not submitted to the Executive County Superintendent; they constitute pre-decisional material used to assist District administration in its budget decision-making process exempt as advisory, consultative, and deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 NJ 75 (2006).
9	Manasquan Board of Education Projection Analysis for 2014-2015 budget dated February 28, 2014 (95 pages)	N/A	These records were not submitted to the Executive County Superintendent; they constitute pre-decisional material used to assist District administration in its budget decision-making process exempt as advisory, consultative, and deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 NJ 75 (2006).
10	Manasquan Board of Education Projection Analysis for 2014-2015 budget dated February 6, 2014 (81 pages)	N/A	These records were not submitted to the Executive County Superintendent; they constitute pre-decisional material used to assist District administration in its budget decision-making process exempt as advisory, consultative, and deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 NJ 75 (2006).
11	Manasquan Board of Education Projection	N/A	These records were not submitted to the Executive County Superintendent; they

	Analysis for 2014-2015 budget dated January 30, 2014 (84 pages)		constitute pre-decisional material used to assist District administration in its budget decision-making process exempt as advisory, consultative, and deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 <u>NJ 75</u> (2006).
12	Manasquan Board of Education Projection Analysis for 2014-2015 budget dated January 20, 2014 (83 pages)	N/A	These records were not submitted to the Executive County Superintendent; they constitute pre-decisional material used to assist District administration in its budget decision-making process exempt as advisory, consultative, and deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 <u>NJ 75</u> (2006).
13	Manasquan Board of Education Projection Analysis for 2014-2015 budget dated December 18, 2013 (117 pages)	N/A	These records were not submitted to the Executive County Superintendent; they constitute pre-decisional material used to assist District administration in its budget decision-making process exempt as advisory, consultative, and deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 <u>NJ 75</u> (2006).
14	Manasquan Board of Education Projection Analysis for 2014-2015 budget dated April 11, 2014 (95 pages)	N/A	These records were not submitted to the Executive County Superintendent; they constitute pre-decisional material used to assist District administration in its budget decision-making process exempt as advisory, consultative and deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> See <u>In re Liquidation of Integrity Insurance Co.</u> , 165 <u>NJ 75</u> (2006).

The Custodian certifies that he kept the Complainant informed via e-mail of the status of the records request. The Custodian further certifies that the Business Administrator provided him with scanned versions of an original and a revised budget submission on April 25, 2014. The Custodian certifies that on that same date he transmitted copies of the records to the Complainant. The Custodian certifies that April 25, 2014, was the fifth business day following receipt of the request because the District was closed for the spring recess from April 14, 2014, through April 21, 2014.

### Additional Submissions:

On May 8, 2014, the Complainant e-mailed the GRC to state that he received a copy of the SOI request letter that was sent from the GRC to the Custodian. The Complainant states that the letter required the Custodian to submit the SOI to the GRC within five business days but that the Custodian failed to abide by that time frame because it was presently the fifth business day, and the Complainant had not yet received a copy of the SOI.<sup>9</sup>

On May 11, 2014, the Complainant supplemented his complaint with additional information. The Complainant submitted to the GRC several pages from a projection analysis that he received from the Custodian in response to another OPRA request. The Complainant argues that because the Custodian disclosed these records as a responsive record to another OPRA request, the Custodian's position that the documents are deliberative in the instant matter is without merit. The Complainant again argues that the supplemental material he requested is necessary for a complete understanding of the budget. The Complainant also submitted to the GRC a "Chart of Accounts." The Complainant argues that over six hundred (600) individual accounts are specified, most of them not being visible or apparent from the Executive County Superintendent submission. The Complainant argues that only with a complete projection analysis would anyone have the details of proposed spending for each account.

On May 13, 2014, the Complainant responded to the Custodian's SOI by stating that he is troubled that the projection analysis documents, which were found to be responsive to the request, reflect eleven (11) different production dates. The Complainant states that none of the dates on the documents match those of the records that were provided to him via a subsequent OPRA request. The Complainant also contends that the administrative departmental requests and projection analysis documents are the "supporting documentation" per statute and therefore cannot be exempt from public access as alleged by the Custodian.

On June 6, 2014, the Custodian informed the GRC that on May 29, 2014, he disclosed to the Complainant the Manasquan Board of Education Projection Analysis for the 2014-2015 budget, dated April 11, 2014, consisting of ninety-five (95) pages.<sup>10</sup>

On June 11, 2014, the Complainant informed the GRC that he received the Custodian's June 6, 2014, submission. The Complainant also reiterates arguments previously made to the GRC.

### Analysis

#### Sufficiency of Response

The GRC previously adjudicated complaints in which a custodian did not address the preferred method of delivery. In O'Shea v. Twp. of Fredon (Sussex), GRC Complaint Number

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<sup>9</sup> Notwithstanding the fact that the Custodian stated that he did not receive the request for the SOI until May 5, 2014, and was therefore still within the five business day period, the GRC forwarded its copy of the completed SOI to the Complainant on Monday morning, May 12, 2014.

<sup>10</sup> This disclosure corresponds to item #6 of the Document Index attached to the SOI.

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." *See also Paff v. Borough of Sussex (Sussex)*, GRC Complaint Number 2008-38 (July 2008), holding that although the custodian timely responded by granting access to the requested record, the custodian's response was insufficient because she failed to address the preferred method of delivery.

Here, in the Custodian's April 10, 2014, response, he informed the Complainant that "the budget submission and documentation are available for public inspection in the business office at this time." This response ignored the Complainant's instructions in the OPRA request to deliver the records electronically.

Thus, the Custodian's April 10, 2014 response was insufficient because he failed to address the Complainant's preferred method of delivery. N.J.S.A. 47:1A-5(g); O'Shea, GRC 2007-251; Paff, GRC 2008-38.

### **Immediate Access**

OPRA provides that "[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiation agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e).

In Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that the "immediate access language of OPRA [N.J.S.A. 47:1A-5(e)] suggests that the Custodian was...obligated to immediately notify the Complainant..." Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond, or requesting clarification of the request. Additionally, if immediate access items are contained within a larger OPRA request containing a combination of records requiring a response within seven (7) business days and immediate access records requiring an immediate response, a custodian still has an obligation to respond to immediate access items immediately. *See Kohn v. Twp. of Livingston (Essex)*, GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013).

In the instant matter, the Complainant made clear his belief that the requested records were immediate access items under OPRA. Conversely, the Custodian disagreed that the requested records were immediate access items because he stated that the records were part of a "non-approved budget submission."

The Complainant asserted that N.J.A.C. 6A:23A-8.2(a) provides for public inspection of the District's budget following its submission to the Executive County Superintendent. This regulation provides as follows:

Each district board of education, upon submission of its budget application to the Executive County Superintendent or by the statutory submission date, whichever is earlier, *shall make available upon request for public inspection all budget and supporting documentation contained in the budget application* and all other documents listed in N.J.A.C. 6A:23A-8.1 once the budget application has been submitted to the Executive County Superintendent for approval. Nothing in this section shall restrict access by the citizens of this State to documents which otherwise qualify as public records pursuant to [OPRA], or under the common law.

N.J.A.C. 6A:23A-8.2(a) (emphasis added).

The regulation thus makes it clear that the budget and supporting documentation are items contained in the budget application subject to public inspection. N.J.S.A. 47:1A-5(e) provides that a budget is an immediate access record. As such, the Custodian had a duty to disclose immediately the budget that was contained in the application. If the Custodian could not disclose the records immediately because they were in the Business Administrator's possession, he had an obligation under OPRA to immediately request additional time to respond. The evidence of record, however, reveals that despite the Custodian's agreement on April 10, 2014, to deliver the budget submission and documentation to the Complainant electronically, the Custodian continued to delay disclosure of said records even though he knew the District offices would be closed from April 14, 2014, to April 21, 2014. Indeed, the Custodian did not respond until April 25, 2014.

Accordingly, by failing to immediately disclose the budget contained in the application submitted to the Executive County Superintendent electronically, or provide a date certain on which he would disclose same, the Custodian violated OPRA's immediate access provision. N.J.S.A. 47:1A-5(e). See Herron, GRC 2006-178 (February 2007); Kohn, GRC 2012-03. However, the GRC declines to order disclosure of the budget because the Custodian certified that he provided same to the Complainant on April 25, 2014.

### **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.

With the exception of immediate access records, OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of

said request. N.J.S.A. 47:1A-5(i). Further, a custodian's response, either granting or denying such access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).

In addition to the disclosed budgets, the Complainant also sought "backup and supporting documentation including administrative departmental requests, as well as...Projection Analysis documents." The Custodian determined that twelve (12) categories of records were responsive to the Complainant's request for said backup and supporting documentation; however he denied the Complainant access to the records on April 24, 2014, claiming said records were considered working papers, work product, and drafts.<sup>11</sup> On June 6, 2014, the Custodian disclosed the records in one of these categories, which is the sixth item in the document index attached to the SOI (also listed as item 6 in the above table); however, he denied the Complainant access to the balance of the backup and supporting documentation as exempt advisory, consultative and deliberative ("ACD") material pursuant to N.J.S.A. 47:1A-1.1. The Complainant asserts that the Custodian unlawfully denied him access to those records.

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 Council<sup>12</sup> dismissing the complaint by accepting the custodian's legal conclusion for the denial of access without further review. 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 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." Id. The Court also stated that:

The 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-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

Id. at 355.

Further, the Court stated that:

We 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-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

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<sup>11</sup> These categories of records are listed in the above table as items numbered 3 through 14.

<sup>12</sup> Paff v. NJ Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

Id.

Therefore, pursuant to Paff, 379 N.J. Super. at 346, the GRC must conduct an *in camera* review of the records responsive to items numbered 3, 4, 5 and 7 through 14 in the above table to determine the validity of the Custodian's assertion that they were lawfully denied in their entirety as ACD material exempt from access pursuant to 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 Custodian's April 10, 2014, response was insufficient because he failed to address the Complainant's preferred method of delivery. N.J.S.A. 47:1A-5(g); O'Shea v. Twp. of Fredon (Sussex), GRC Complaint Number 2007-251 (February 2008); Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008).
2. By failing to immediately disclose the budget contained in the application submitted to the Executive County Superintendent electronically, or provide a date certain on which he would disclose same, the Custodian violated OPRA's immediate access provision. N.J.S.A. 47:1A-5(e). See Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013). However, the GRC declines to order disclosure of the budget because the Custodian certified that he provided same to the Complainant on April 25, 2014.
3. Pursuant to Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the records responsive to items numbered 3, 4, 5 and 7 through 14 in the above table to determine the validity of the Custodian's assertion that they were lawfully denied in their entirety as ACD material exempt from access pursuant to N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver<sup>13</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see paragraph #3 above), nine (9) copies of the redacted records, a document or redaction index<sup>14</sup>, as well as a legal**

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<sup>13</sup> 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.

<sup>14</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.



**certification in accordance with N.J. Court Rule 1:4-4,<sup>15</sup> that the records provided are the records 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.**

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.

Prepared By: John E. Stewart

Reviewed By: Joseph D. Glover  
Executive Director

April 21, 2015

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<sup>15</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."