



**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**

**January 26, 2016 Government Records Council Meeting**

Harry B. Scheeler, Jr.  
Complainant

Complaint No. 2014-236

v.

NJ Office of the Attorney General  
Custodian of Record

At the January 26, 2016 public meeting, the Government Records Council (“Council”) considered the January 19, 2016 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 December 15, 2015 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director, wherein the Custodian stated that she provided a specific lawful basis for each redaction by placing on a duplicate copy of the disclosed records a numerical identifier next to each redaction keyed to the specific lawful basis for the redaction and disclosing same to the Complainant.
2. Although Custodian Elise Goldblat’s response was insufficient, because she failed to respond to the request for immediate access records immediately and failed to provide a detailed lawful basis for each redaction, 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 26<sup>th</sup> Day of January, 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: January 29, 2016**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
January 26, 2016 Council Meeting**

**Harry B. Scheeler, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-236**

v.

**New Jersey Office of the Attorney General<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** All legal bills submitted by the law firm Gibson, Dunn & Crutcher from November 1, 2013, until June 12, 2014.

**Custodian of Record:** Lauren J. Zarrillo<sup>3</sup>  
**Request Received by Custodian:** June 12, 2014  
**Response Made by Custodian:** June 17, 2014  
**GRC Complaint Received:** June 18, 2014

**Background**

**December 15, 2015 Council Meeting:**

At its December 15, 2015 public meeting, the Government Records Council (“Council”) considered the December 15, 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 response was insufficient because the records responsive to the request are immediate access records, and the Custodian failed to respond to the request immediately, granting or denying access, requesting additional time to respond, or requesting clarification. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(e), Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) and Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2010-279 (February 2012). *See also* Muska v. Millburn Bd. of Educ., GRC Complaint No. 2004-41 (May 2004), Verry v. Borough of Bound Brook (Somerset), GRC Complaint Nos. 2009-204, 205 (Interim Order October 26, 2010) and Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2010-175 (September 2011).

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

<sup>2</sup> Represented by Deputy Attorney General Eric S. Pasternack.

<sup>3</sup> The original Custodian was Elise Goldblat.

2. The Custodian's response was legally insufficient under OPRA because she failed to provide a written response that sets forth a detailed and lawful basis for each redaction. Because there is no dispute between the parties that the Custodian disclosed the requested records, the Custodian must provide to the Complainant the specific lawful basis for each redaction. N.J.S.A. 47:1A-5(g), Paff v. Borough Lavallette (Ocean), GRC Complaint No. 2007-209 (December 2008). *See also* Scheeler v. Borough of West Cape May (Cape May), GRC Complaint No. 2014-143 (Interim Order April 28, 2015).
3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>4</sup> to the Executive Director.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On December 16, 2015, the Council distributed its December 15, 2015 Interim Order to all parties. On December 22, 2015, the fourth (4<sup>th</sup>) business day following receipt of the Order, the Custodian's Counsel requested and was granted an extension of time until January 6, 2016 to comply with the Council's Order. On January 6, 2016, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Executive Director wherein she stated that she provided a specific lawful basis for each redaction by placing a numerical identifier next to each redaction, in which 1 is information protected by the attorney-client privilege, 2 is the work product privilege, 3 identifies taxpayer identification numbers, and 4 identifies confidential financial information. The certification of compliance included a duplicate copy of the disclosed records annotated with the aforementioned numerical identifiers. The Custodian's Counsel submitted a letter brief accompanying the Custodian's certification of compliance in which he indicated that the Complainant was copied on said compliance.

#### Analysis

#### Compliance

On December 15, 2015, the Council ordered the above-referenced compliance. On December 16, 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 initially due on or before December 23, 2015. On December 22, 2015, the fourth (4<sup>th</sup>) business day after the Custodian received the Interim Order, the Custodian's Counsel requested and was granted an extension of time until January 6, 2016, to comply with the Order. On

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<sup>4</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."

Harry B. Scheeler v. New Jersey Office of the Attorney General, 2014-236 – Supplemental Findings and Recommendations of the Executive Director

January 6, 2016, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Executive Director.

Therefore, the Custodian complied with the Council's December 15, 2015 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director, wherein the Custodian stated that she provided a specific lawful basis for each redaction by placing on a duplicate copy of the disclosed records a numerical identifier next to each redaction keyed to the specific lawful basis for the redaction and disclosing same to the Complainant.

### **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 (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)).

Although Custodian Elise Goldblat's response was insufficient, because she failed to respond to the request for immediate access records immediately and failed to provide a detailed lawful basis for each redaction, 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 December 15, 2015 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Executive Director, wherein the Custodian stated that she provided a specific lawful basis for each redaction by placing on a duplicate copy of the disclosed records a numerical identifier next to each redaction keyed to the specific lawful basis for the redaction and disclosing same to the Complainant.
2. Although Custodian Elise Goldblat's response was insufficient, because she failed to respond to the request for immediate access records immediately and failed to provide a detailed lawful basis for each redaction, 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

Reviewed By: Joseph D. Glover  
Executive Director

January 19, 2016



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

INTERIM ORDER

December 15, 2015 Government Records Council Meeting

Harry B. Scheeler, Jr.  
Complainant

Complaint No. 2014-236

v.

NJ Office of the Attorney General  
Custodian of Record

At the December 15, 2015 public meeting, the Government Records Council (“Council”) considered the December 15, 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 response was insufficient because the records responsive to the request are immediate access records, and the Custodian failed to respond to the request immediately granting or denying access, requesting additional time to respond, or requesting clarification. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(e), Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) and Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2010-279 (February 2012). *See also* Muska v. Millburn Bd. of Educ., GRC Complaint No. 2004-41 (May 2004), Verry v. Borough of Bound Brook (Somerset), GRC Complaint Nos. 2009-204, 205 (Interim Order October 26, 2010) and Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2010-175 (September 2011).
2. The Custodian’s response was legally insufficient under OPRA because she failed to provide a written response that sets forth a detailed and lawful basis for each redaction. Because there is no dispute between the parties that the Custodian disclosed the requested records, the Custodian must provide to the Complainant the specific lawful basis for each redaction. N.J.S.A. 47:1A-5(g), Paff v. Borough Lavallette (Ocean), GRC Complaint No. 2007-209 (December 2008). *See also* Scheeler v. Borough of West Cape May (Cape May), GRC Complaint No. 2014-143 (Interim Order April 28, 2015).
3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council’s Interim Order and simultaneously provide**



**certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup>  
to the Executive Director.**

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

Interim Order Rendered by the  
Government Records Council  
On The 15<sup>th</sup> Day of December, 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: December 16, 2015**

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



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
December 15, 2015 Council Meeting**

**Harry B. Scheeler, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-236**

v.

**New Jersey Office of the Attorney General<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** All legal bills submitted by the law firm Gibson, Dunn & Crutcher from November 1, 2013, until June 12, 2014.

**Custodian of Record:** Elise Goldblat

**Request Received by Custodian:** June 12, 2014

**Response Made by Custodian:** June 17, 2014

**GRC Complaint Received:** June 18, 2014

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

**Request and Response:**

On June 12, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 17, 2014, the third (3<sup>rd</sup>) business day following receipt of said request, the Custodian responded via e-mail, informing the Complainant that she attached the records responsive to the request. In a section titled, “Document Detail,” the Custodian listed item number one and item number two, totaling 76 pages and 81 pages, respectively. Under each item, the Custodian wrote: “Redactions for information protected by the attorney-client and attorney work product privileges, Federal Taxpayer Identification Number, and bank account and financial identifier information.”

**Denial of Access Complaint:**

On June 18, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant states that he provided the records request to the Custodian on June 12, 2014, and that the Custodian responded to the request on June 17, 2014.

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

<sup>2</sup> Represented by Deputy Attorney General Eric S. Pasternack.

<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.

The Complainant asserts that the requested records were provided on the fourth<sup>4</sup> business day, redacted without sufficient explanation. The Complainant states that the records should have been provided immediately pursuant to N.J.S.A. 47:1A-5(e). The Complainant contends that if the Custodian had a valid reason for an extension of time to respond, the Complainant should have been notified immediately. The Complainant cites Scheeler v. Motor Vehicle Comm'n, GRC Complaint No. 2013-207 (January 2014), in support of his position. The Complainant also asserts that the Custodian failed to “attribute the redactions” and failed to provide a redaction log. The Complainant contends that a custodian must inform a requestor of the specific basis for each part of the record denied through redaction, but here the Custodian failed to do so.

Statement of Information:

On July 23, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on June 12, 2014, and that she responded in writing on June 17, 2014.

The Custodian certifies that two items were responsive to the Complainant’s request. The first item is a May 1, 2014 letter from Alexander Southwell of Gibson, Dunn & Crutcher, LLP (“GDC”), to DOL Director Jeffrey Jacobson with attached invoice for services rendered and costs/charges advanced through January 13, 2014, totaling 76 pages. The second item is a GDC invoice for services rendered and costs/charges advanced through February 28, 2014, totaling 81 pages. For each item, the Custodian certifies that redactions were made to protect information subject to the attorney client and work product privileges, delete federal taxpayer identification numbers, and delete bank account and financial identifier information.

The Custodian more specifically sets forth the legal explanation for the redactions as follows:

- N.J.S.A. 47:1A-1.1 (attorney invoices may be redacted to remove information protected by the attorney client privilege).
- N.J.S.A. 47:1A-9(a) (OPRA does “not abrogate any exemption of a public record or government record from public access” as recognized by other laws, including regulations and federal law).
- N.J.S.A. 47:1A-9(b) (OPRA does “not abrogate or erode any executive or legislative privilege or grant of confidentiality” established by court rule or judicial case law).
- N.J.A.C. 13:1E-3.2(a)(3) (records that reveal attorney work product or attorney client information are not considered government records).
- N.J.S.A. 47:1A-1 (requiring public agencies to protect personal information).

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<sup>4</sup> The Custodian responded in three business days, not four.

- 26 U.S.C.A. § 6103 (providing that taxpayer identification information is confidential).

The Custodian's Counsel argues that the Complaint wrongly alleges that the Custodian did not provide him with immediate access to the requested records and that the Custodian's response lacked the requisite specificity. Counsel contends that N.J.S.A. 47:1A-5(e) does not apply to attorney invoices and that OPRA imposes no requirement to contact the requestor immediately to request an extension of time.

Counsel states that the Custodian fully responded to the request within two business days from date of receipt. Counsel asserts that N.J.S.A. 47:1A-5(e) provides that "[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information" (emphasis added by Counsel). Counsel states that based on the statute's language, a requestor is only entitled to immediate access if the request is one "which can 'ordinarily' be granted." Counsel further states that "[t]he term 'ordinarily' means 'normally, usually, generally, as a rule, typically, routinely.'" Counsel cites Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 198 (Law Div. 2002). Counsel argues that an attorney bill is not a record that can ordinarily or usually be quickly released because attorney bills and invoices may contain privileged attorney client information that is subject to redaction under OPRA. For this reason, Counsel argues, OPRA's "immediate access" requirement does not pertain to attorney bills.

Counsel states that the Complainant argued that the Custodian's explanation of the basis for the redactions lacked the requisite specificity; however, Counsel asserts that the Custodian fully satisfied her obligation under OPRA to indicate the specific basis for the redactions. Counsel states that the Custodian redacted information protected by the attorney client and work product privileges, as well as personal identifiers from the invoices. Counsel relies on Fisher v. Div. of Law, 400 N.J. Super. 61, 73 (App. Div. 2008) (quoting Brown v. FBI, 658 F.2d 71,74 (2d Cir. 1981), as authority for arguing that "when the facts in [the requestor's] possession are sufficient to allow an effective presentation of its case, an itemized and indexed justification of the specificity contemplated by Vaughn may be unnecessary." Counsel argues that in this matter a Vaughn Index is unnecessary because the records provided to the Complainant contain sufficient information on their face to satisfy the specificity requirement. Counsel argues that where there are redactions, the invoices provide sufficient information to discern the applicability of the asserted attorney client and work product privilege. Counsel asserts that the records also clearly indicate where confidential financial information, such as bank account and federal taxpayer identification numbers, were redacted.

## Analysis

### Immediate Access

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

Request item number 5 sought legal *bills*. Bills are immediate access records under N.J.S.A. 47:1A-5(e). Although the Custodian promptly responded in writing to the Complainant's request within the statutorily mandated time frame, she failed to do so immediately. The Custodian's Counsel argued that N.J.S.A. 47:1A-5(e) does not apply to attorney invoices and that OPRA imposes no requirement to immediately contact the requestor to request an extension of time. However, the Council has long held to the contrary.

The Council has consistently determined that attorney invoices are immediate access records. In Muska v. Millburn Bd. of Educ., GRC Complaint No. 2004-41 (May 2004), the complainant requested a copy of an attorney's bill. The Council found that the custodian violated N.J.S.A. 47:1A-5(e) by not providing the complainant immediate access to the requested attorney's bill. In Verry v. Borough of Bound Brook (Somerset), GRC Complaint Nos. 2009-204, 205 (Interim Order October 26, 2010), the complainant submitted requests for all invoices submitted by two different law firms. The Council held that, "because the Custodian failed to immediately grant access to the invoices responsive to both of the Complainant's OPRA requests, the Custodian has violated [OPRA]." Subsequently, in Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2010-279 (February 2012), where the complainant sought an inspection of legal bills, the Council determined that said bills were immediate access records, and a custodian's response to an OPRA request for immediate access records must be in writing and made immediately upon receipt of said request in order to constitute a lawful response under OPRA.

The Council has also consistently determined that where an immediate access record is at issue, if that record cannot for any reason be immediately disclosed, the custodian has an obligation to notify the requestor immediately in writing. In Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007), where the custodian responded several days after receipt of the request, informing the complainant that an employment contract did not exist, the Council held that the "immediate access language of OPRA . . . suggests that the Custodian was still obligated to *immediately notify* the Complainant of such" (emphasis added). Later, in Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2010-175 (September 2011), the Council, after noting that request item number 2 sought invoices for five attorneys, determined that ". . . [t]he invoices requested are specifically classified under OPRA as 'immediate access' records . . . [i]nasmuch 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." See also Dittrich, GRC 2010-279, where the Council stated that a custodian's response to a request for immediate access records must be in writing and made immediately upon receipt of the request.

The GRC agrees with the Custodian's Counsel that an attorney bill is not a record that can ordinarily or quickly be disclosed because attorney bills and invoices may contain privileged attorney client information that is subject to redaction under OPRA. For this reason, a custodian must carefully examine such invoices and redact privileged and/or confidential material prior to disclosure. However, the Council has held that when attorney invoices are requested, a custodian must immediately notify the requestor that more time will be needed to inspect, and perhaps redact, such records.

Here, the Custodian had an obligation to respond to the request for the records immediately, granting or denying access, requesting additional time to respond, or requesting clarification. The evidence of record reveals, however, that the Custodian did not respond to the Complainant's request until June 17, 2014, which was the third (3<sup>rd</sup>) business day following receipt of the request.

Accordingly, the Custodian's response was insufficient because the records responsive to the request are immediate access records, and the Custodian failed to respond to the request immediately by granting or denying access, requesting additional time to respond, or requesting clarification. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(e), Herron, GRC 2006-178 and Dittrich, GRC 2010-279. *See also* Muska, GRC 2004-41, Verry, 2009-204, 205 and Verry GRC 2010-175.

### **Sufficiency of Response**

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 issue of providing a specific lawful basis for redactions at the time of the denial was considered by the Council in Paff v. Borough Lavallette (Ocean), GRC Complaint No. 2007-209 (December 2008). In Paff, the custodian provided access to the requested records with certain material redacted. The complainant argued that the custodian violated OPRA by failing to provide a specific lawful basis for the redactions made to the responsive records. The Council held that:

[T]he Custodian's response was legally insufficient under OPRA because he failed to provide a written response setting forth a detailed and lawful basis for each redaction. *See* Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29, (July 2005)(ordering the custodian to provide redacted executive session minutes with a detailed and lawful basis for each redacted part.). *See also* Schwarz v. NJ Dep't of Human Services, GRC Complaint No. 2004-60, (February 2005)(setting forth the proposition that specific citations to the law that allows a denial of access are required at the time of the denial). Therefore, the Custodian violated OPRA pursuant to N.J.S.A. 47:1A- 5(g).

### **Id.**

More recently, in Scheeler v. Borough of West Cape May (Cape May), GRC Complaint No. 2014-143 (Interim Order dated April 28, 2015), the custodian responded to a request for attorney bills on day of the request by providing the responsive bills with redactions. The custodian included in her response a document index identifying each redaction and the reason as "attorney-client privilege and/or attorney work product." The Council held that, although the custodian provided the responsive records with a document index, noting the exact date of each

invoice that was redacted and the reason for redaction, her response was insufficient because she did not provide a reasonable explanation of the information redacted to allow the complainant to determine whether the redactions were lawful.

In the instant complaint, the Custodian made several redactions to the disclosed records and provided the following explanation as a blanket reason for making said redactions: “Redactions for information protected by the attorney-client and attorney work product privileges, Federal Taxpayer Identification Number, and bank account and financial identifier information.” The Custodian neither identified which exemptions applied to each redaction, nor provided specific citations to the law.<sup>5</sup> The Custodian’s one sentence explanation for deleting material from the invoices does not serve to provide a specific lawful basis for making each of the redactions.

Accordingly, the Custodian’s response was legally insufficient under OPRA because she failed to provide a written response that sets forth a detailed and lawful basis for each redaction. Because there is no dispute between the parties that the Custodian disclosed the requested records, the Custodian must provide to the Complainant the specific lawful basis for each redaction. N.J.S.A. 47:1A-5(g), Paff, GRC 2007-209. *See also* Scheeler, GRC 2014-143 (Interim Order dated April 28, 2015).

### **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 was insufficient because the records responsive to the request are immediate access records, and the Custodian failed to respond to the request immediately granting or denying access, requesting additional time to respond, or requesting clarification. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(e), Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007) and Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2010-279 (February 2012). *See also* Muska v. Millburn Bd. of Educ., GRC Complaint No. 2004-41 (May 2004), Verry v. Borough of Bound Brook (Somerset), GRC Complaint Nos. 2009-204, 205 (Interim Order October 26, 2010) and Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2010-175 (September 2011).
2. The Custodian’s response was legally insufficient under OPRA because she failed to provide a written response that sets forth a detailed and lawful basis for each redaction. Because there is no dispute between the parties that the Custodian

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<sup>5</sup> The Custodian did provide specific citations to the law in the SOI.

disclosed the requested records, the Custodian must provide to the Complainant the specific lawful basis for each redaction. N.J.S.A. 47:1A-5(g), Paff v. Borough Lavallette (Ocean), GRC Complaint No. 2007-209 (December 2008). *See also* Scheeler v. Borough of West Cape May (Cape May), GRC Complaint No. 2014-143 (Interim Order April 28, 2015).

3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>6</sup> to the Executive Director.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: John E. Stewart

Reviewed By: Joseph D. Glover  
Executive Director

December 15, 2015

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<sup>6</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."