



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**

**September 29, 2016 Government Records Council Meeting**

Thomas Vandergrift  
Complainant

Complaint No. 2014-373

v.

Pennsauken Public Schools (Camden)  
Custodian of Record

At the September 29, 2016 public meeting, the Government Records Council (“Council”) considered the September 22, 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 the prevailing party failed to comply with the Council’s Interim Order because neither the Complainant nor counsel timely submitted an application for attorney’s fees. N.J.A.C. 5:105-2.13(b). Accordingly, the Executive Director recommends that the Council close the matter because no further analysis is necessary.

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 29<sup>th</sup> Day of September, 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 4, 2016**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
September 29, 2016 Council Meeting**

**Thomas Vandergrift<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-373**

v.

**Pennsauken Public Schools (Camden)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of:

1. Invoices for legal services billed to the Pennsauken School District related to special education matters from the law firm of Parker McCay from the date of August 1, 2011, to present;
2. Responses to Request for Proposals for legal services related to special education matters received by the Pennsauken School District from August 1, 2011, to present;
3. Complaints filed with any court or administrative agency against the Pennsauken School District from August 1, 2011, to present which allege discrimination or retaliation of any kind;
4. Settlement agreements entered into by the Pennsauken School District as a result of resolution of complaints alleging discrimination or retaliation of any kind from August 1, 2011, to present;
5. Personnel records of Marty DeLape, limited to those showing title, position, salary, payroll record, length of service, and pension information;
6. Personnel records of Holly Taylor, limited to those showing title, position, salary, payroll record, length of service, and pension information;
7. Personnel records of Chris Lavell, limited to those showing title, position, salary, payroll record, length of service, and pension information; and
8. Personnel records of Marilyn Martinez, limited to those showing title, position, salary, payroll record, length of service, and pension information.

**Custodian of Record:** John J. Deserable

**Request Received by Custodian:** August 7, 2014

**Response Made by Custodian:** August 18, 2014; November 5, 2014; November 10, 2014

**GRC Complaint Received:** November 14, 2014

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<sup>1</sup> Represented by Amelia Carolla, Esq. (Haddonfield, NJ).

<sup>2</sup> Represented by Frank Piarulli, Esq. (Pennsauken, NJ).

## Background<sup>3</sup>

### July 26, 2016 Council Meeting:

At its July 26, 2016 public meeting, the Council considered the July 19, 2016 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 in part that:

[t]he Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Council determined that a portion of the special service charge was unreasonable and ordered a refund to the Complainant. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 51. **Thus, the Complainant, or his attorney, is entitled to submit an application to the Council for an award of attorney’s fees within twenty (20) business days following the effective date of this decision. N.J.A.C. 5:105-2.13(b). The Custodian shall have ten (10) business days from the date of service of the application for attorney’s fees to object to the attorney’s fees requested. N.J.A.C. 5:105-2.13(d). To the extent that the attorney has not already received compensation, the award for attorney’s fees is limited to work provided in adjudicating this matter.**

### Procedural History:

On July 27, 2016, the Council distributed its July 26, 2016 Interim Order (“Interim Order”) to all parties. The Council’s Interim Order noted that the Complainant was a prevailing party and entitled to an award of attorney’s fees. The Council ordered the Complainant or Amelia Carolla, Esq., Counsel for the Complainant (“Counsel”),<sup>4</sup> to file and serve a fee application within twenty (20) business days following the effective date of the Interim Order. N.J.A.C. 5:105-2.13(b). Thus, the deadline to submit a fee application was August 10, 2016. The Council also provided the Custodian or his counsel ten (10) business days from the date of service of the fee application to object to the fees requested. N.J.A.C. 5:105-2.13(d).

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<sup>3</sup> The parties may have submitted additional correspondence or made additional statement/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>4</sup> Complainant’s Counsel was identified as such within the Denial of Access Complaint, but on June 22, 2016, she informed the Government Records Council that she no longer represented the Complainant.

## Analysis

### Compliance

In its Interim Order, the Council found that the Complainant was a prevailing party. The Council therefore ordered the Complainant or Counsel to submit a fee application within twenty (20) business days following the effective date of the order in accordance with N.J.A.C. 5:105-2.13(b). Thus, the deadline to submit a fee application was August 10, 2016.

As of August 19, 2016, the Government Records Council has not received an application for an award of attorney's fees from either the Complainant or Counsel.

Therefore, the prevailing party failed to comply with the Council's Interim Order because neither the Complainant nor counsel timely submitted an application for attorney's fees. N.J.A.C. 5:105-2.13(b). Accordingly, the Executive Director recommends that the Council close the matter because no further analysis is necessary.

### Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the prevailing party failed to comply with the Council's Interim Order because neither the Complainant nor counsel timely submitted an application for attorney's fees. N.J.A.C. 5:105-2.13(b). Accordingly, the Executive Director recommends that the Council close the matter because no further analysis is necessary.

Prepared By: Samuel A. Rosado  
Staff Attorney

September 22, 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

June 28, 2016 Government Records Council Meeting

Thomas Vandergrift  
Complainant

Complaint No. 2014-373

v.

Pennsauken Public Schools (Camden)  
Custodian of Record

At the June 28, 2016 public meeting, the Government Records Council (“Council”) considered the June 21, 2016 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. Although the Custodian has proven that a special service charge is warranted here, the inclusion of one (1) hour for the Business Administrator to ensure compliance with OPRA is unreasonable. Specifically, the evidence does not support that the Business Administrator expended time and effort to fulfill this OPRA request that was beyond the regular functions of a Records Custodian. *See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); The Courier Post v. Lenape Reg’l High Sch.*, 360 N.J. Super. 191, 199 (Law Div. 2002). Thus, the Custodian shall refund the Complainant the amount of \$80.00 for the one (1) hour of labor charged on behalf of the Business Administrator. *Coulter v. Twp. of Bridgewater (Somerset)*, GRC Complaint No. 2008-220 (Interim Order dated November 18, 2009).
2. **The Custodian shall comply with Item No. 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.<sup>2</sup>**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

<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."

<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.



4. The Council defers analysis of whether the Complainant is a prevailing party 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 June, 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: June 29, 2016**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 28, 2016 Council Meeting**

**Thomas Vandergrift<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-373**

v.

**Pennsauken Public Schools (Camden)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of:

1. Invoices for legal services billed to the Pennsauken School District related to special education matters from the law firm of Parker McCay from the date of August 1, 2011, to present;
2. Responses to Request for Proposals for legal services related to special education matters received by the Pennsauken School District from August 1, 2011, to present;
3. Complaints filed with any court or administrative agency against the Pennsauken School District from August 1, 2011, to present which allege discrimination or retaliation of any kind;
4. Settlement agreements entered into by the Pennsauken School District as a result of resolution of complaints alleging discrimination or retaliation of any kind from August 1, 2011, to present;
5. Personnel records of Marty DeLape, limited to those showing title, position, salary, payroll record, length of service, and pension information;
6. Personnel records of Holly Taylor, limited to those showing title, position, salary, payroll record, length of service, and pension information;
7. Personnel records of Chris Lavell, limited to those showing title, position, salary, payroll record, length of service, and pension information; and
8. Personnel records of Marilyn Martinez, limited to those showing title, position, salary, payroll record, length of service, and pension information.

**Custodian of Record:** John J. Deserable

**Request Received by Custodian:** August 7, 2014

**Response Made by Custodian:** August 18, 2014; November 5, 2014; November 10, 2014

**GRC Complaint Received:** November 14, 2014

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<sup>1</sup> Represented by Amelia Carolla, Esq. (Haddonfield, NJ).

<sup>2</sup> Represented by Frank Piarulli, Esq. (Pennsauken, NJ).

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

### **Request and Response:**

On August 6, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records via informal correspondence. On August 18, 2014, the Custodian responded in writing seeking an extension of time until August 29, 2014. The Custodian also imposed a special service charge of \$844.08 and stated that the request would not be processed until payment was made in full. On November 4, 2014, the Complainant hand-delivered a letter and check to the Custodian for payment of the special service charge and requested receipt of the records by no later than November 25, 2014. Additionally, the Complainant’s letter stated that he would be filing a challenge to the special service charge imposed.

### **Denial of Access Complaint:**

On November 11, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted his belief that the special service charge was “excessive, exorbitant, and retaliatory in nature.” The Complainant included a document, which was signed by the Custodian’s secretary and acknowledged receipt of payment for the special service charge. The Complainant also included a copy of his check indicating that the Custodian processed it on November 10, 2014.

### **Supplemental Responses:**

After the complaint was filed, the Custodian sent a letter to the GRC on November 24, 2014, in response to an offer to participate in mediation. The Custodian stated that he had provided the Complainant with all the requested documents on that date and questioned why mediation proceedings were necessary. The Custodian attached correspondence, sent to the Complainant, that indicated the records provided. The Custodian also informed the Complainant that he would re-calculate the actual cost incurred for processing the request.

On December 4, 2014, the Complainant replied to the Custodian via facsimile. The Complainant alleged that the Custodian failed to provide Item Nos. 2, 3, and 4 of his OPRA request. Separately, the Custodian sent a letter to the Complainant on December 4, 2014, claiming that the cost to fulfill his OPRA request was less than the \$844.08 estimated and that the Complainant can pick up a refund check in person.

On December 10, 2014, the Custodian disputed the Complainant’s allegation that he had not fulfilled his OPRA request. The Custodian attached copies of responsive records for Item Nos. 3 and 4 with his correspondence and denied that any responsive records exist for Item No. 2. The Custodian added the cost of labor needed to produce the records as part of the special service charge.

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<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.



### Statement of Information:

On December 30, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on August 7, 2014. The Custodian certified that he responded in writing on August 18, 2014, seeking an extension of time to respond and imposing a special service charge for fulfilling the request. The Custodian later revised the special service charge to reflect the actual costs incurred to fulfill the request. The Custodian asserted that the Complainant is due a refund of \$481.59.

### Additional Submissions

On April 7, 2016, the GRC requested additional information from the Custodian. Specifically, the GRC requested that the Custodian submit a 14-point analysis by April 14, 2016, so that the GRC can determine whether the disputed special service charge is reasonable and warranted. The GRC granted an extension of time to respond to until April 22, 2016.

On April 22, 2016, the Custodian responded to the GRC’s request for additional information as follows:

**1. What records are requested?**

**Response:** The request sought all legal bills for special education matters, requests for proposal for legal services, copy of complaints filed with the court or administrative agencies alleging discrimination or retaliation, settlement agreements, and certain personnel records related to four employees. With the exception of the personnel records, the time period in question was August 1, 2011, through August 6, 2014.

**2. Give a general nature description and number of the government records requested.**

**Response:** Legal bills are typically provided on a monthly basis. They are processed as they are received and are not kept in an exclusive file. Complainants and settlements are contained in individual student files. Personnel records are kept in individual personnel files. According to the Custodian’s invoices, the request produced 153 pages of records.

**3. What is the period of time over which the records extend?**

**Response:** Other than personnel records, from August 1, 2011, through August 6, 2014.

**4. Are some or all of the records sought archived or in storage?**

**Response:** Files for the years 2011 and 2012 were archived and in storage.

**5. What is the size of the agency (total number of employees)?**

**Response:** The Custodian did not provide an exact number but stated that the agency employs “hundreds of full and part time employees” (sic).

**6. What is the number of employees available to accommodate the records request?**

**Response:** Seven different people performed tasks related to this OPRA request.

**7. To what extent do the requested records have to be redacted?**

**Response:** Each page of records needed to be reviewed to ensure that no student names or privileged information appeared on the materials.

**8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve, and assemble the records for copying?**

**Response:** The charge is composed of 15 hours of work as follows:

<b>Employee</b>	<b>Hours Spent</b>	<b>Hourly Rate</b>
“JJD” (Custodian)	1.0	\$80.00
“AD”	10.0	\$22.57
“EN”	1.0	\$22.57
“PC”	2.0	\$22.57
“CC”	1.0	\$22.57

The above information is based upon the invoices provided by the Custodian. The first (1<sup>st</sup>) invoice included thirteen (13) hours of labor plus actual costs pertaining to the Complainant’s August 4, 2014 request. The second (2<sup>nd</sup>) invoice reflects two (2) additional hours of labor and actual costs incurred based on the Complainant’s December 10, 2014 correspondence. The Custodian elected not to include the costs from the 2<sup>nd</sup> invoice in the special service charge. Thus, the Custodian imposed a special service charge of \$350.84 (labor minus copying costs and postage).

**9. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?**

**Response:** Included in total hours per Item No. 8.

**10. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to return records to their original storage place?**

**Response:** Included in total hours per Item No. 8.

**11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?**

**Response:** The District chose the least expensive staff worker available to perform the requested task.

**12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?**

**Response:** The Custodian must oversee all aspects of the District's response to ensure compliance. The Complainant was billed one hour at \$80.00 to fulfill the Custodian's obligations under this request.

**13. What is the availability of information technology and copying capabilities?**

**Response:** Except for actual copying costs, the District did not utilize special technology to perform this task.

**14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce, and return the requested documents.**

**Response:** The District initially estimated the fee at \$844.08, based upon 24 hours of clerical work plus \$300 for the Custodian to review the records for possible redactions. The fee was later revised downward when the request was fulfilled.

**Analysis**

**Special Service Charge**

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.

Whenever a records custodian asserts that fulfilling an OPRA request requires an "extraordinary" expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides:

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies[.]

N.J.S.A. 47:1A-5(c).

The determination of what constitutes an “extraordinary expenditure of time and effort” under OPRA must be made on a case by case basis and requires an analysis of the variety of factors discussed in The Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002). There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the “extraordinary burden” placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

The Court determined that in the context of OPRA, the term “extraordinary” will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. Id. at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” Id.

Additionally, in complaints where the complainant paid an assessed fee and the Council subsequently determined that he fee was unwarranted or unreasonable, the Council has ordered the public agency to refund monies to complainant. *See* Coulter v. Twp. of Bridgewater (Somerset), GRC Complaint No. 2008-220 (Interim Order dated November 18, 2009) (*citing* Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (January 2008) (Council ordered refund after concluding assessed special service charge of \$5.00 was unreasonable)).

Here, the Custodian provided a response to questions posed by the GRC that reflect the analytical framework outlined in Courier Post, 360 N.J. Super. at 199, regarding the proper assessment of a special service charge. The Custodian argued that the \$350.84 charge represented thirteen (13) of the fifteen (15) total hours of labor expended to produce the records.

The Complainant’s OPRA request sought legal invoices over a three (3) year period, as well as complaints and settlement agreements with the District pertaining to claims of discrimination. The request also sought the title, position, salary, payroll record, length of service, and pension information of four (4) public employees. According to the Custodian’s

invoices, 153 pages of records are responsive to the request. The GRC notes that the Custodian's 14-point analysis and SOI confirms that well more than half of the responsive records needed to be checked for student information and privileged information. Additionally, requested records for the years 2011 and 2012 were archived and in storage according to the Custodian. Combined with the total expenditure of fifteen (15) hours to fulfill the request, the GRC is satisfied that the evidence of record supports the imposition of a special service charge.

Here, the GRC is not satisfied that the one (1) hour charged on behalf of the Business Administrator/Board Secretary ("Business Administrator") was for labor incurred beyond the ordinary time and effort expended to fulfill the request. A Custodian cannot impose a special service charge for the labor costs associated with the regular obligations of satisfying an OPRA request. N.J.S.A. 47:1A-5(b). Under Item 12 of the 14-point analysis, the Custodian asserted that he billed the Complainant since he "must oversee all aspects of the District's response to ensure compliance with the statute." Without additional information, this explanation is insufficient to show that the Custodian's labor constituted an "extraordinary time and effort" beyond fulfilling the regular functions as the Records Custodian. Therefore, the Complainant is entitled to a refund of \$80.00 for the one (1) hour of labor charged on behalf of the Business Administrator.

Therefore, although the Custodian has proven that a special service charge is warranted here, the inclusion of one (1) hour for the Business Administrator to ensure compliance with OPRA appears unreasonable. Specifically, the evidence does not support that the Business Administrator expended time and effort to fulfill this OPRA request that was beyond the regular functions of a Records Custodian. See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. at 199. Thus, the Custodian shall refund the Complainant the amount of \$80.00 for the one (1) hour of labor charged on behalf of the Business Administrator. Coulter, GRC No. 2008-220.

### **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.

### **Prevailing Party Attorney's Fees**

The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian has proven that a special service charge is warranted here, the inclusion of one (1) hour for the Business Administrator to ensure compliance with OPRA is unreasonable. Specifically, the evidence does not support that the Business Administrator expended time and effort to fulfill this OPRA request that was beyond

the regular functions of a Records Custodian. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); The Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002). Thus, the Custodian shall refund the Complainant the amount of \$80.00 for the one (1) hour of labor charged on behalf of the Business Administrator. Coulter v. Twp. of Bridgewater (Somerset), GRC Complaint No. 2008-220 (Interim Order dated November 18, 2009).

2. **The Custodian shall comply with Item No. 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.<sup>5</sup>**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
4. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado  
Staff Attorney

June 21, 2016

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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."

<sup>5</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.