



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, 2015 Government Records Council Meeting**

Kathleen Giambri  
Complainant  
v.  
Sterling High School District (Camden)  
Custodian of Record

Complaint Nos. 2014-393, 2014-396,  
and 2014-401

At the September 29, 2015 public meeting, the Government Records Council (“Council”) considered the September 22, 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 complied with the Council’s July 28, 2015, Interim Order because she responded in the prescribed time frame by providing nine (9) copies of the South Jersey Technology Partnership Oversight Committee Report and “Concept Paper” (redacted and unredacted) for an *in camera* review. Further, the Custodian simultaneously submitted certified confirmation of compliance to the Executive Director.
2. The Custodian lawfully denied access to the redacted portions of the Report and “Concept Paper” because same constitute inter-agency or intra-agency advisory, consultative, or deliberative material. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Educ. Law Ctr. v. N.J. Dep’t of Educ., 198 N.J. 274, 285, 301-302 (2009). Moreover, because the Custodian lawfully denied access to the redacted portions of the records at issue and no other violations have occurred, the Council need not address whether she knowingly and willfully violated OPRA under the totality of the circumstance.

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, 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: October 5, 2015**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director  
September 29, 2015 Council Meeting**

**Kathleen Giambri<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-393,  
2014-396 and 2014-401<sup>2</sup>**

v.

**Sterling High School District (Camden)<sup>3</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

October 30, 2014 OPRA request:<sup>4</sup> Electronic copies via e-mail of:

1. Any and all authorizations, work orders, purchase orders, time sheets, letters, memoranda, and invoices for security camera work completed between October 1, 2014, and October 30, 2014.
2. Electrical permits for installing exterior cameras between October 1, 2014, and October 30, 2014.
3. Letters and/or memoranda sent to PSE&G requesting authorization to utilize its poles to mount cameras.
4. Letters and/or memoranda received from PSE&G authorizing the use of its poles to mount cameras.
5. Any and all board resolutions, agendas, committee reports and minutes authorizing relocation of security cameras from Sterling High School District (“District”) owned poles by the parking lot gate to the pole near the tennis courts.

November 3, 2014 OPRA request:<sup>5</sup> Electronic copies via e-mail of:

1. Any and all authorizations, work orders, purchase orders, time sheets, letters, memoranda and invoices for security camera work completed between 8:00 a.m. on October 30, 2014, and 8:00 a.m. on October 31, 2014.
2. Electrical permits for relocating exterior cameras between October 30, 2014, and October 31, 2014.
3. Any and all board resolutions, agendas, committee reports and minutes authorizing relocation of security cameras from the pole near the tennis courts to the District-owned pole by the parking lot gate between October 30, 2014 and October 31, 2014.

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

<sup>2</sup> The GRC has consolidated these complaints for adjudication because of the commonality of the parties and issues.

<sup>3</sup> Represented by John B. Comegno II, Esq., and Kyle Allen, Esq., of Comegno Law Group, P.C. (Moorestown, NJ).

<sup>4</sup> This OPRA request is the subject of GRC Complaint No. 2014-393.

<sup>5</sup> This OPRA request is the subject of GRC Complaint No. 2014-396.

November 11, 2014 OPRA request:<sup>6</sup> Electronic copies of any and all meeting agendas and attachments for all committee meetings held between October 1, 2014, and October 31, 2014.<sup>7</sup>

**Custodian of Record:** Elizabeth M. Giambrone

**Request Received by Custodian:** October 30, 2014, November 3, 2014, and November 11, 2014

**Response Made by Custodian:** November 11, 2014, November 13, 2014, and November 20, 2014

**GRC Complaints Received:** November 25, 2014

**Records Submitted for *In Camera* Examination:**

- South Jersey Technology Partnership (“SJTP”) Oversight Committee Report (“Report”).
- “Concept Paper.”

**Background**

July 28, 2015 Council Meeting:

At its July 28, 2015, public meeting, the Council considered the July 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 Complainant’s October 30, 2014, OPRA request items Nos. 1 and 5, as well as the Complainant’s November 3, 2014, request item Nos. 1 and 3, are invalid because the Custodian would be required to conduct research in order to determine which records were responsive. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147 *et seq.* (July 2012). Moreover, the Complainant’s October 30, 2014, request item Nos. 3 and 4 are invalid under OPRA because she failed to include a date or range of dates for the responsive letters and memoranda to which she sought access. Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-118 (January 2014). The Custodian has thus lawfully denied access to these request items. N.J.S.A. 47:1A-6.
2. The Custodian did not unlawfully deny access to the Complainant’s October 30, and November 3, 2014, OPRA request item No. 2, because the Custodian certified that

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<sup>6</sup> This OPRA request is the subject of GRC Complaint No. 2014-401. Further, the GRC notes that the Complainant annotated this request as an amendment to her October 30, 2014, OPRA request item Nos. 1 through 4.

<sup>7</sup> The Complainant requested additional records that are not at issue in the instant complaint.

such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

3. The GRC must conduct an *in camera* review of the [Report] and "Concept Paper" to determine the validity of the Custodian's assertion that the records are exempt in their entirety under OPRA because they contain inter-agency or intra-agency advisory, consultative, or deliberative material. See Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005); N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver<sup>8</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 3 above), nine (9) copies of the redacted records, a document or redaction index<sup>9</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>10</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.

#### Procedural History:

On July 29, 2015, the Council distributed its Interim Order to all parties. On August 5, 2015, the GRC received the Custodian's response to the Council's Interim Order. Therein, the Custodian certified that she was providing nine (9) copies of the subject records (redacted and unredacted) to the Council for an *in camera* review.

#### Analysis

##### Compliance

At its July 28, 2015, meeting, the Council ordered the Custodian to provide to the GRC redacted and unredacted copies of the Report and "Concept Paper" for an *in camera* review. Additionally, the Council ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On July 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. Thus, the Custodian's response was due by close of business on August 5, 2015.

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<sup>8</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>9</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>10</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."

On August 5, 2015, the last business day to comply with the Council's Order, the GRC received the Custodian's response wherein she provided nine (9) copies of the subject records (redacted and unredacted) for an *in camera* review. Further, the Custodian simultaneously submitted certified confirmation of compliance to the Executive Director.

Therefore, the Custodian complied with the Council's July 28, 2015, Interim Order because she responded in the prescribed time frame by providing nine (9) copies of the Report and "Concept Paper" (redacted and unredacted) for an *in camera* review. Further, the Custodian simultaneously submitted certified confirmation of compliance to the Executive Director.

### **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.

OPRA provides that the definition of a government record ". . . shall not include . . . inter-agency or intra-agency advisory, consultative, or deliberative [("ACD")] material." N.J.S.A. 47:1A-1.1. When invoking this exception, a governmental entity may "withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated." Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274, 285 (2009)(citing NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975)). When claiming an OPRA exception to the disclosure requirements on that basis, a custodian must initially satisfy two conditions: (1) the document must be pre-decisional, meaning that the document was generated prior to the adoption of the governmental entity's policy or decision; and (2) the document must reflect the deliberative process, which means that it must contain opinions, recommendations, or advice about agency policies. Id. at 286 (internal citations and quotations omitted). Moreover, a record containing or involving factual components is still 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. Educ. Law Ctr., 198 N.J. 274, 301-302.

The key factor in this determination is whether the contents of the document reflect "formulation or exercise of . . . policy-oriented judgment or the process by which policy is formulated." Id. at 295 (adopting the federal standard for determining whether material is "deliberative" and quoting Mapother v. Dep't of Justice, 3 F.3d 1533, 1539 (D.C. Cir. 1993)). Once the governmental entity satisfies these two threshold requirements, a presumption of confidentiality is established, which the requester may rebut by showing that the need for the material overrides the government's interest in confidentiality. Id. at 286-87.

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

## South Jersey Technology Partnership Oversight Committee Report

In the SOI, the Custodian certified that the Report was presented to the SJTP Oversight committee for the purposes of initiating a deliberative process to ascertain the future of SJTP and to develop important policy decisions. The Custodian argued that she did not redact headings; however, some clearly indicate the deliberative nature of each redaction. The Custodian also noted that the Report contained both factual and advisory elements.

Upon review, the GRC confirms that the redacted sections of the Report contain a mix of factual and informational points regarding the internal operations of SJTP. A number of the redacted paragraphs provide detail into the SJTP's day-to-day operations, as well as what appears to be justifications for the projected numbers contained in several charts attached to the Report (which were disclosed in their entirety). The paragraphs certainly contain the type of information that an agency would consider in making future policy decisions about funding, operating strategies, personnel decisions, *etc.* The Report meets the two (2) condition standard because: 1) it was clearly created in order to aid the District in making future policy decisions about the future of SJTP; and 2) it contains opinions, recommendations, and factual information integral to the District's deliberations on SJTP's future. The GRC is thus satisfied that the Custodian properly redacted the Report.

### "Concept Paper"

In the SOI, the Custodian certified that the "Concept Paper" was created to advise the Board of various options and to promote deliberations as to which option the Board might select as a matter of policy.

Upon review, the GRC confirms that the record contains three proposals for a District-owned tract of land and building. The redacted information contained therein clearly falls within the ACD exemption. Specifically, the options act as recommendations for consideration of plans. The redacted information contained in this record meets both conditions of the ACD test. Specifically: 1) the record came into existence prior to the District coming to a decision on what to do with the property; and 2) the record contains information relevant to the District's deliberations on property and opinions on the benefits/realities of selecting each plan. This includes some redacted headings that would fundamentally reveal the options that the District is considering. Thus, the GRC is satisfied that the Custodian properly redacted the "Concept Paper."

Accordingly, the Custodian lawfully denied access to the redacted portions of the Report and "Concept Paper" because same constitute ACD material. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Educ. Law Ctr., 198 N.J. at 285, 301-302. Moreover, because the Custodian lawfully denied access to the redacted portions of the records at issue and no other violations have occurred, the Council need not address whether she knowingly and willfully violated OPRA 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 July 28, 2015, Interim Order because she responded in the prescribed time frame by providing nine (9) copies of the South Jersey Technology Partnership Oversight Committee Report and "Concept Paper" (redacted and unredacted) for an *in camera* review. Further, the Custodian simultaneously submitted certified confirmation of compliance to the Executive Director.
  
2. The Custodian lawfully denied access to the redacted portions of the Report and "Concept Paper" because same constitute inter-agency or intra-agency advisory, consultative, or deliberative material. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274, 285, 301-302 (2009). Moreover, because the Custodian lawfully denied access to the redacted portions of the records at issue and no other violations have occurred, the Council need not address whether she knowingly and willfully violated OPRA under the totality of the circumstance.

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover  
Executive Director

September 22, 2015





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**

**July 28, 2015 Government Records Council Meeting**

Kathleen Giambri  
Complainant

Complaint Nos. 2014-393,  
2014-396 and 2014-401

v.

Sterling High School District (Camden)  
Custodian of Record

At the July 28, 2015 public meeting, the Government Records Council (“Council”) considered the July 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 Complainant’s October 30, 2014, OPRA request items Nos. 1 and 5, as well as the Complainant’s November 3, 2014, request item Nos. 1 and 3, are invalid because the Custodian would be required to conduct research in order to determine which records were responsive. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147 *et seq.* (July 2012). Moreover, the Complainant’s October 30, 2014, request item Nos. 3 and 4 are invalid under OPRA because she failed to include a date or range of dates for the responsive letters and memoranda to which she sought access. Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-118 (January 2014). The Custodian has thus lawfully denied access to these request items. N.J.S.A. 47:1A-6.
2. The Custodian did not unlawfully deny access to the Complainant’s October 30, and November 3, 2014, OPRA request item Nos. 2, because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. See Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
3. The GRC must conduct an *in camera* review of the South Jersey Technology Partnership Oversight Committee Report and “Concept Paper” to determine the validity of the Custodian’s assertion that the records are exempt in their entirety under OPRA because they contain inter-agency or intra-agency advisory, consultative, or



deliberative material. See Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005); 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 No. 3 above), nine (9) copies of the redacted records, a document or redaction index<sup>2</sup>, as well as a legal certification from the Custodian, 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 July, 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: July 29, 2015**

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<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.

<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  
July 28, 2015 Council Meeting**

**Kathleen Giambri<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-393,  
2014-396 and 2014-401**

v.

**Sterling High School District (Camden)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

October 30, 2014 OPRA request:<sup>3</sup> Electronic copies via e-mail of:

1. Any and all authorizations, work orders, purchase orders, time sheets, letters, memoranda, and invoices for security camera work completed between October 1, 2014, and October 30, 2014.
2. Electrical permits for installing exterior cameras between October 1, 2014, and October 30, 2014.
3. Letters and/or memoranda sent to PSE&G requesting authorization to utilize its poles to mount cameras.
4. Letters and/or memoranda received from PSE&G authorizing the use of its poles to mount cameras.
5. Any and all board resolutions, agendas, committee reports and minutes authorizing relocation of security cameras from Sterling High School District (“District”) owned poles by the parking lot gate to the pole near the tennis courts.

November 3, 2014 OPRA request:<sup>4</sup> Electronic copies via e-mail of:

1. Any and all authorizations, work orders, purchase orders, time sheets, letters, memoranda and invoices for security camera work completed between 8:00 a.m. on October 30, 2014, and 8:00 a.m. on October 31, 2014.
2. Electrical permits for relocating exterior cameras between October 30, 2014, and October 31, 2014.
3. Any and all board resolutions, agendas, committee reports and minutes authorizing relocation of security cameras from the pole near the tennis courts to the District-owned pole by the parking lot gate between October 30, 2014 and October 31, 2014.

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

<sup>2</sup> Represented by John B. Comegno II, Esq., and Kyle Allen, Esq., of Comegno Law Group, P.C. (Moorestown, NJ).

<sup>3</sup> This OPRA request is the subject of GRC Complaint No. 2014-393.

<sup>4</sup> This OPRA request is the subject of GRC Complaint No. 2014-396.

Kathleen Giambri v. Sterling High School District (Camden), 2014-393, 2014-396 and 2014-401 – Findings and Recommendations of the Executive Director

November 11, 2014 OPRA request:<sup>5</sup> Electronic copies of any and all meeting agendas and attachments for all committee meetings held between October 1, 2014 and October 31, 2014.<sup>6</sup>

**Custodian of Record:** Elizabeth M. Giambrone

**Request Received by Custodian:** October 30, 2014, November 3, 2014 and November 11, 2014

**Response Made by Custodian:** November 11, 2014, November 13, 2014 and November 20, 2014

**GRC Complaints Received:** November 25, 2014

### **Background**<sup>7</sup>

#### Request and Response:

##### October 30, 2014 OPRA request

On October 30, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 11, 2014, the sixth (6<sup>th</sup>) business day after receipt of the OPRA request, the Custodian responded in writing, first noting that the District was closed on November 6 and November 7, 2014; thus, the response is timely. In her response, the Custodian denied the Complainant’s OPRA request in its entirety as overly broad. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005).

##### November 3, 2014 OPRA request

On November 3, 2014, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On November 13, 2014, the sixth (6<sup>th</sup>) business day after receipt of the OPRA request, the Custodian responded in writing, first noting that the District was closed on November 6 and November 7, 2014; thus, the response is timely. In her response, the Custodian denied the Complainant’s OPRA request in its entirety as overly broad. MAG, 375 N.J. Super. at 546.

##### November 11, 2014 OPRA request

On November 11, 2014, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On November 20, 2014, the sixth (6<sup>th</sup>) business day after receipt of the OPRA request, the Custodian responded in writing, providing access to redacted records and a privilege log that provides the reasons for redaction.

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<sup>5</sup> This OPRA request is the subject of GRC Complaint No. 2014-401. Further, the GRC notes that the Complainant annotated this request as an amendment to her October 30, 2014, OPRA request item Nos. 1 through 4.

<sup>6</sup> The Complainant requested additional records that are not at issue in the instant complaint.

<sup>7</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.

Kathleen Giambri v. Sterling High School District (Camden), 2014-393, 2014-396 and 2014-401 – Findings and Recommendations of the Executive Director

### Denial of Access Complaint:

On November 25, 2014, the Complainant filed all three (3) Denial of Access Complainant with the Government Records Council (“GRC”)

#### October 30, 2014 OPRA request

The Complainant asserted that the Custodian unlawfully denied access to her OPRA request because records regarding the movement of security cameras should exist. The Complainant argued that the District moved one (1) security camera from a District-owned pole to a PSE&G pole and directed it towards her business. The Complainant asserted that movement of the camera seemed to be a breach of the District’s security protocol, as it is directed away from District property. Moreover, the Complainant asserted that the District would have had to obtain authorizations and electrical permits to perform the camera relocation. Additionally, the Complainant argued that the District should have communicated with PSE&G prior to performing the work.

The Complainant noted that the camera was returned to its original pole after she submitted this OPRA request. The Complainant argued that responsive records memorializing the relocation of the security camera in such a recent, limited time frame should exist and that the Custodian purposely withheld responsive records.

#### November 3, 2014 OPRA request

The Complainant reiterated her arguments as stated above.

#### November 11, 2014 OPRA request

The Complainant contended that the Custodian’s redactions to the South Jersey Technology Partnership (“SJTP”) Oversight Committee (“Committee”) Report (“Report”) and “Concept Paper” appeared excessive. Regarding the Report, the Complainant asserted that information such as “cost to operate,” “timeline,” and other historical data, such as “Previous Revenue Projection Overview,” should be disclosed. Regarding the “Concept Paper,” the Complainant noted that the Custodian only disclosed seventeen (17) words in the whole record, which totaled twenty-two (22) pages. As a result of the redactions, the Complainant contended that she is unable to ascertain the subject of the “Concept Paper.” The Complainant asserted that a committee report presented at a District meeting should be disclosed without redactions.

### Statement of Information:

#### October 30, 2014 OPRA request

On December 26, 2014, the Custodian filed a Statement of Information (“SOF”). Therein, the Custodian certified that she received the Complainant’s OPRA request on October 30, 2014. The Custodian certified that she responded in writing on November 11, 2014, and denied the Complainant’s OPRA request as invalid.

The Custodian refuted the Complainant's allegation that she violated OPRA. Specifically, the Custodian asserted that the request was invalid because it required research or sought information instead of identifiable government records. MAG, 375 N.J. Super. at 546; Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); LaMantia v. Jamesburg Public Library (Middlesex), GRC Complaint No. 2008-140 (February 2009).

Regarding item Nos. 1 and 5, the Custodian contended that the Complainant's use of the term "any and all" signifies the overly broad nature of her request.

Regarding item No. 2, the Custodian asserted that the Complainant failed to identify an issuing agency. The Custodian argued that the District provides goods and services to dozens of other agencies through shared services agreements and that the Complainant is aware of that arrangement. The Custodian contended that the Complainant's failure to identify a physical location exacerbated the broadness of the request item. Further, the Custodian argued that she would need to research all electrical permits to determine which were issued for the sole purpose of installing security cameras in October 2014.

Regarding item Nos. 3 and 4, the Custodian contended that the Complainant failed to identify a sender and/or recipient and a specific date or range of dates. The Custodian contended that the Complainant's request items would require her to research all letters and memoranda to determine whether any responsive records existed. The Custodian noted that the Complainant submitted new OPRA requests on November 11, and 14, 2014, attempting to specify the correspondence she sought; however, the District denied access on the basis that no records existed.

#### November 3, 2014 OPRA request

On December 29, 2014, the Custodian filed an SOI. Therein, the Custodian asserted that the request items were invalid because they required research or sought information instead of identifiable government records. MAG, 375 N.J. Super. at 546 (App. Div. 2005); Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; LaMantia, GRC 2008-140. The Custodian reiterated arguments similar to those above for the October 30, 2014, OPRA request item Nos. 1, 2 and 5.

Additionally, regarding item No. 2, the Custodian certified that in response to subsequent requests, she advised the Complainant that no records exist. The Custodian asserted that a public agency cannot unlawfully deny access to records it does not possess or maintain, despite the Complainant's arguments that responsive records should exist.

#### November 11, 2014 OPRA request

On December 22, 2014, the Custodian filed an SOI. Therein, the Custodian stated that the ACD exemption permits public agencies to withhold records that reflect opinions, recommendations, and deliberations that comprise part of the process by which an agency makes

decisions and forms policies. Educ. Law Ctr. v. NJ Dep't of Educ., 198 N.J. 274, 285 (2009). The Custodian further stated that the initial burden is on the agency to show that a record is pre-decisional and deliberative in nature. In Re: the Liquidation of Integrity Ins. Co., 165 N. J. 75 (2000). The Custodian noted that the record at issue must meet two (2) requirements: 1) the record must be pre-decisional or generated prior to adoption of the agency's policy or decision; and 2) the record must be deliberative in nature, containing opinions, recommendations, or advice about agency policies. Id. at 84-85.

Regarding the Report, the Custodian certified that the District Board operates SJTP, a Shared Services - Enterprise Fund 60. The Custodian certified that SJTP provides a variety of goods and services to other agencies in the State. The Custodian noted that the Complainant is familiar with SJTP's operations because her husband once served as its Director of Operations. The Custodian certified that the SJTP Committee presented the Report to the District Board on October 16, 2014, with the purpose of initiating a deliberative process to ascertain the future of SJTP and to develop important policy decisions. The Custodian affirmed that the Report contains both factual and advisory elements.

The Custodian asserted that the Report headings, which were not redacted, indicate that the redacted material falls within the ACD exemption. The Custodian noted that contents under "Previous Revenue Projection Overview" contains historical data but also contains advisory opinions from the Committee to the Board. Further, the Custodian noted that the contents under "Overview SJTP Operations" set forth information to allow the Board to make important policy decisions about SJTP. The Custodian contended that, contrary to the Complainant's allegations, the District provided her with substantial records regarding actual operations costs.

Regarding the "Concept Paper," the Custodian certified that same pertains to a building owned by the District and presents three (3) options for use of the property and building in the future. The Custodian affirmed that the record was created to advise the Board of these options to promote deliberations as to which the Board would select as a matter of policy.

Regarding all three (3) complaints, the Custodian contended that the Complainant filed them frivolously and in bad faith on behalf of Educational Business Services ("EBS"), solely to harass the District. See Caggiano v. Borough of Stanhope (Sussex), GRC Complaint No. 2007-20 *et seq.* (September 2007). The Custodian asserted that the Complainant began an "ignominious" campaign on October 30, 2014, by filing twenty-six (26) OPRA requests over approximately eighteen (18) business days, all of which sought at least 176 items. The alleged purpose was to harass, annoy, and substantially disrupt the District. The Custodian asserted that it is impossible to calculate the number of responsive records, although she estimated that the number is in the thousands. The Custodian contended that this campaign was the result of a recently concluded investigation by the New Jersey Department of Education's Office of Fiscal Accountability & Compliance ("OFAC") into EBS and the Complainant's husband. According to the Custodian, the investigation found that the Complainant's husband had several conflicts of interest with the Hi-Nella Board of Education, Hi-Nella Township, and the South Jersey Technology Partnership ("SJTP"). The Custodian noted that this complaint is one (1) of six (6) filed on the same day.

The Custodian stated that, due to ongoing issues with the Complainant and EBS, the District sought judicial relief in Camden County Superior Court by filing an Order to Show Cause with Temporary Restraints. The Custodian stated that on December 3, 2014, the Honorable Judge Nan S. Famular granted the District's request for temporary restraints to enjoin EBS from submitting additional OPRA requests and relieve the District of its obligation to complete any outstanding OPRA requests.

### Analysis

#### Validity of Request

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 New Jersey Appellate Division has held that:

*While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1.*

MAG, 375 N.J. Super. at 546 (emphasis added).

The Court reasoned that:

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

Id. at 549 (emphasis added).

The Court further held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files." Id. at 549 (emphasis added). Bent, 381



N.J. Super. at 37;<sup>8</sup> NJ Builders, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

October 30, 2014 OPRA request item Nos. 1 and 5  
November 3, 2014 OPRA request item Nos. 1 and 3

In Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147 *et seq.* (July 2012), the complainant submitted four (4) OPRA requests, seeking copies of minutes containing motions to approve other minutes to which the custodian had denied access as overly broad. The Council, citing to Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC Complaint No. 2008-258 (August 2009), and Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010), determined that the complainant's requests were overly broad:

[S]aid requests do not specify the date or time frame of the minutes sought. Rather, the requests seek those minutes at which the [Union County Board of Education] motioned to approve meeting minutes for four (4) other meetings. Similar to the facts of both Taylor and Ray, the requests herein seek minutes that refer to a topic and would require the Custodian to research the [Union County Board of Education's] meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant's requests . . . because the Complainant's four (4) requests for minutes "that include a motion made by the Union City Board of Education to approve the minutes . . ." from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant's requests are invalid under OPRA.

Valdes, at 10 (citations omitted).

Here, the Complainant's October 30, 2014, request item No. 1 sought authorizations, work orders, purchase orders, time sheets, letters, memoranda, and invoices for security camera work completed between October 1, and October 30, 2014. The Complainant's November 3, 2014, request item No. 1 narrowed the time frame of the initial request item to between October 30, and October 31, 2014. The Complainant's October 30, 2014, request item No. 5 sought resolutions, agendas, "committee" reports and minutes for security camera work completed between October 1, and October 30, 2014. The Complainant's November 3, 2014, request item No. 3 similarly narrowed the time frame of the initial request to between October 30, and October 31, 2014.

However, such a request for multiple types of records that refer to work conducted over a certain time period would require research. Specifically, records pertaining to the work completed may not have necessarily been created at the time of or during the time frame identified by the Complainant. Moreover, the items seeking minutes, resolutions, agendas, *etc.* fall squarely on the Council's holding in Valdes, GRC 2011-147 *et seq.* For this reason, the Custodian would be required to research a wide array of various types of records and read

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<sup>8</sup> Affirming Bent v. Stafford Police Dep't, GRC Case No. 2004-78 (October 2004).

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through each to determine whether same referred to security camera work completed within those time frames: OPRA does not require a custodian to research records.

It should also be noted that the portion of the OPRA request seeking letters and memoranda are invalid for the reasons addressed below.

#### October 30, 2014 OPRA request item Nos. 3 and 4

The GRC has established criteria deemed necessary under OPRA to request an e-mail communication. Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council determined that to be valid, such requests must contain: (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. *See also Sandoval v. NJ State Parole Bd.*, GRC Complaint No. 2006-167 (Interim Order March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. *See Armenti v. Robbinsville Bd. of Educ. (Mercer)*, GRC Complaint No. 2009-154 (Interim Order May 24, 2011). The GRC notes that the Council has determined that requests seeking correspondence but omitting the specific date or range of dates are invalid. *See Kohn v. Twp. of Livingston (Essex)*, GRC Complaint No. 2013-118 (January 2014).

Here, the Complainant's request items contain, at a minimum, the content of the letters and memoranda sought. Additionally, the item No. 3 contained a recipient and item No. 4 contained a sender (both PSE&G). However, the request was devoid of a date or range of dates. Similar to the facts in Kohn, these request items are invalid because they failed to contain all necessary criteria established in Elcavage, GRC 2009-07, and adopted in Armenti, GRC 2009-154 for letters and memoranda.

Accordingly, the Complainant's October 30, 2014, request items Nos. 1 and 5, as well as the Complainant's November 3, 2014 request item Nos. 1 and 3, are invalid because they would require the Custodian to conduct research in order to determine which records were responsive to same. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Valdes, GRC 2011-147 *et seq.* Moreover, the Complainant's October 30, 2014, request item Nos. 3 and 4 are invalid under OPRA because she failed to include a date or range of dates for the responsive letters and memoranda to which she sought access. Armenti, GRC 2009-154; Kohn, GRC 2013-118. The Custodian has therefore lawfully denied access to these request items. N.J.S.A. 47:1A-6.

#### **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.

#### October 30, and November 3, 2014 OPRA request item Nos. 2

Initially, the GRC views these two (2) request items differently from those determined to be invalid. In each of the Complainant's two (2) request items, she sought electrical permits for installing or relocating external cameras. The first request item identified a time frame from October 1, to October 30, 2014, while the second request item reduced the time frame to between October 30, and October 31, 2014. The limited nature of both request items, that is, seeking one (1) type of record over a limited time period regarding security cameras, should not require research to locate and provide records. Further, as argued by the Custodian in the SOI, the Complainant failed to identify a location or issuing agency in the immediate request items. However, the Complainant did identify a location as part of other items in both requests: that is from District owned poles to the parking lot pole "near the tennis court."

However, notwithstanding the foregoing, the Custodian certified in the SOI for GRC Complaint No. 2014-396 that she subsequently advised the Complainant in response to other OPRA requests for similar records that the District neither possessed nor maintained same.

In Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant's request for billing records existed and the complainant submitted no evidence to refute the custodian's certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian's certification, there was no unlawful denial of access to the requested records.

As a result, the Custodian did not unlawfully deny access to the Complainant's October 30, and November 3, 2014, OPRA request item Nos. 2, because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. See Pusterhofer, GRC 2005-49.

#### November 11, 2014 OPRA request

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>9</sup> that accepted the custodian's legal conclusion for the denial of access without further review. The Appellate Division noted 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 stated that:

[OPRA] 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.'

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<sup>9</sup> Paff v. NJ Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

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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 found 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.

Id.

Here, the Complainant disputed the Custodian's denial of access to the Report and "Concept Paper." The Complainant asserted that redactions were excessive and that the Custodian could have disclosed additional information in the Report. The Complainant also argued that she was unable to determine the subject of the "Concept Paper" because the Custodian had redacted all but seventeen (17) words. Conversely, the Custodian argued that the Report and "Concept Paper" were created to advise the District Board on SJTP and a property respectively so as to allow the Board to engage in deliberations about future policy issues. The Custodian further asserted that the redacted information included opinions, some historical data, and options for future policy. Notwithstanding the Custodian's description of the content of both records, the GRC must review same in order to determine the full applicability of ACD exemption.

Therefore, the GRC must conduct an *in camera* review of the Report and "Concept Paper" to determine the validity of the Custodian's assertion that the records are exempt in their entirety under OPRA because they contain ACD material. See Paff, 379 N.J. Super. at 346; N.J.S.A. 47:1A-1.1.

The GRC declines to address whether this complaint was frivolous and filed with intent to harass the District. Notwithstanding the evidence presented, the District has successfully litigated this issue in Superior Court. Thus, no analysis on the issue is required.

### **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 Complainant's October 30, 2014, OPRA request items Nos. 1 and 5, as well as the Complainant's November 3, 2014, request item Nos. 1 and 3, are invalid because the Custodian would be required to conduct research in order to determine which records were responsive. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147 *et seq.* (July 2012). Moreover, the Complainant's October 30, 2014, request item Nos. 3 and 4 are invalid under OPRA because she failed to include a date or range of dates for the responsive letters and memoranda to which she sought access. Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-118 (January 2014). The Custodian has thus lawfully denied access to these request items. N.J.S.A. 47:1A-6.
2. The Custodian did not unlawfully deny access to the Complainant's October 30, and November 3, 2014, OPRA request item Nos. 2, because the Custodian certified that such records do not exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. *See* Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
3. The GRC must conduct an *in camera* review of the South Jersey Technology Partnership Oversight Committee Report and "Concept Paper" to determine the validity of the Custodian's assertion that the records are exempt in their entirety under OPRA because they contain inter-agency or intra-agency advisory, consultative, or deliberative material. *See* Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005); N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver<sup>10</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 3 above), nine (9) copies of the redacted records, a document or redaction index<sup>11</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>12</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.**

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<sup>10</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>11</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>12</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."

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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: Frank F. Caruso  
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover  
Executive Director

July 21, 2015