



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

April 30, 2019 Government Records Council Meeting

William Mark Scott
Complainant

Complaint No. 2015-256

v.

NJ Health Care Facilities Financing Authority
Custodian of Record

At the April 30, 2019 public meeting, the Government Records Council (“Council”) considered the April 23, 2019 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 to the Complainant’s July 30, 2015 OPRA request was sufficient because she provided the Complainant with specific citations to the law that allowed for a denial of access. N.J.S.A. 47:1A-5(g). See Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), Schwarz v. N.J. Dep’t of Human Serv., GRC Complaint No. 2004-60 (February 2005), and Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010).
2. The Council should grant Deborah’s motion to intervene, as the evidence in the demonstrates that Deborah has a unique and significant interest in the outcome of the matter, and its inclusion will not cause an undue delay or confusion from its inclusion. N.J.A.C. 1:1-16.3(a); Gill v. N.J. Dep’t of Banking & Ins., 404 N.J. Super. 1, 10-11 (App. Div. 2008).
3. The Custodian did not unlawfully deny access to the Complainant’s July 30, 2015 OPRA request. N.J.S.A. 47:1A-6. The request seeks tax return information that is protected from disclosure pursuant to 26 U.S.C. § 6103. N.J.S.A. 47:1A-9(a); Church of Scientology of Cal. v. IRS, 484 U.S. 9, 10-12 (1987); Tax Analysts v. IRS, 53 F. Supp.2d 449, 452 (D.D.C. 1999).

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 30th Day of April 2019

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: May 3, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
April 30, 2019 Council Meeting**

**William Mark Scott¹
Complainant**

GRC Complaint No. 2015-256

v.

**N.J. Health Care Facilities Financing Authority²
Custodial Agency**

Records Relevant to Complaint: “All correspondence (including information document requests) and agreements between the [New Jersey Health Care Facilities Financing Authority (“Authority”)] and the U.S. Internal Rev. Service concerning an IRS examination of, and negotiation or settlement of the examination dispute relating to, [Authority] 1993 Revenue Bonds, issued for benefit of Deborah Heart and Lung Center.”

Custodian of Record: Carol Conover

Request Received by Custodian: July 30, 2015

Response Made by Custodian: August 4, 2015

GRC Complaint Received: August 10, 2015

Background³

Request and Response:

On July 30, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 4, 2015, the Custodian responded to the Complainant in writing, stating that the records are confidential under N.J.S.A. 47:1A-9 and 26 U.S.C. § 6103 (2016) (“Section 6103”).

Denial of Access Complaint:

On August 10, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian denied access to the records without enough explanation.

¹ No representation listed on record.

² Represented by Deputy Attorney General Rebecca Pluckhorn.

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Council Staff the submissions necessary and relevant for the adjudication of this complaint.

The Complainant asserted that Section 6103 is not applicable to the records at issue. The Complainant contended that the records relate to a United States Internal Revenue Service (“IRS”) examination of bonds issued by the Authority to the Deborah Heart and Lung Center (“Deborah”). The Complainant included IRS Publication TEB-1, which he asserted indicates that the Authority is treated as the “taxpayer,” since it is the issuer of the bonds. According to the Complainant, this means that all correspondence between the IRS and the Authority are the tax records of the Authority. The Complainant contended that as the taxpayer, the Authority can release its own records, citing St. Regis Paper Co. v. U.S., 368 U.S. 208, 219 (1961).

The Complainant also argued that Section 6103 prohibits three (3) categories of persons from disclosing tax record information. According to the Complainant, the first category is Federal officials. The second category is State or local employees, but only those who administer certain programs described in Section 6103(a)(2). The Complainant stated that the provision restricts employees who have access to the IRS’s database of returns or return information and utilize that access for law enforcement purposes or to enforce child support obligations. The Complainant asserted that the Authority is not a law enforcement agency, and their employees would not require access to the IRS’s database of returns to carry out their duties. Thus, the Complainant asserted that Section 6103(a)(2) would not apply to the Authority. Lastly, the Complainant stated that the third category describes individuals who engage in the processing, storage, transmission, or reproduction of return information used in tax administration. The Complainant contended that Authority employees do not qualify under this category either.

The Complainant concluded that Section 6103 and in turn N.J.S.A. 47:1A-9 are not applicable in this matter and would not allow the Authority to restrict access to the requested records. The Complainant also stated that a blanket citation of law that has no application to the current matter was an insufficient basis to deny access to the records.

Statement of Information:⁴

On September 23, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 30, 2015. The Custodian certified that she reached out to the Authority’s Executive Director and Director of Operations for any responsive records they may have in their possession. The Custodian certified that she responded in writing on August 4, 2015, denying access to the request based on the understanding that the records were part of an on-going IRS examination, and thus confidential under N.J.S.A. 47:1A-9 and Section 6103.

The Custodian certified that the matter relates to correspondence and agreements between the IRS and the Authority regarding tax exempt bonds issued to Deborah. The Custodian certified that the bonds were lent to Deborah to help fund renovations and additions for some of Deborah’s hospital facilities. The Custodian certified that in order to maintain the tax exemption, Deborah had to comply with federal rules concerning the use of the bonds. The Custodian certified that the requested correspondence concern Deborah’s compliance with the examination, and negotiations of a settlement between the Authority and the IRS as a result.

⁴ The Complaint was referred to mediation on August 25, 2015. The Complaint was referred back from mediation on September 3, 2015.

The Custodian argued that the records are exempt from disclosure via N.J.S.A. 47:1A-9(a), which incorporates within OPRA other laws and regulations which protect certain records from disclosure. In turn, the Custodian contended that Section 6103 protects from disclosure federal tax returns and return information. The Custodian cited Tele-Radio Systems, Ltd. v. De Forest Elec., Inc. 92 F.R.D. 371, 375 (D.N.J. 1981), stating that “[w]hile tax returns do not enjoy an absolute privilege from discovery, a public policy against unnecessary public disclosure arises from the need, if the tax laws are to function properly, to encourage taxpayers to file complete and accurate returns.” The Custodian also cited DeMasi v. Weiss, 609 F.2d 114, 119 (2d. Cir. 1982) and Ullman v. Hartford Fire Ins. Co. 87 N.J. Super. 409, 415-16 (App. Div. 1965) to contend that the standard to disclose tax returns and information is equivalent to a qualified privilege.

The Custodian asserted that the phrase “returns and return information” is broadly defined under Section 6103. The Custodian noted that the Complainant did not dispute that the records sought constituted returns or return information. Further, the Custodian contended that the Complainant’s arguments ignore the initial statement from Section 6103, which states that tax return information is “confidential.” In conjunction with Section 6103(a)(2), which states in part that “no officer or employee of any State” may disclose tax return information, the Custodian argued that the language of the statute is intended to provide blanket confidentiality for return information possessed by any State employee, regardless of how they obtained the information.

The Custodian noted that the GRC has routinely held that tax information is confidential and not subject to OPRA, citing Gelber v. City of Hackensack, GRC Complaint No. 2011-148 (June 2012), where the Council held that W-2 forms contained tax return information and therefore not subject to access under Section 6103. Additionally, the Custodian contended that although the Authority was a filing taxpayer, the records at issue are *de facto* records of Deborah, and would have an interest in protecting the confidentiality of the information concerning its finances.

Intervenor Submissions:

On September 25, 2015, Deborah filed a notice of motion to intervene in the current matter. Deborah asserted that it seeks to intervene since the records at issue contained their taxpayer return information but are possessed by the Authority.

Deborah first argued that it is entitled to intervene in the current matter, in accordance with the Appellate Division in Gill v. N.J. Dep’t of Banking & Ins., 404 N.J. Super. 1, 10 (App. Div. 2008) holding that the GRC must abide by the Administrative Procedures Act and its regulations when deciding on a motion to intervene. Deborah further asserted that it has a significant interest in the outcome of the matter, as the records largely pertain to Deborah’s own confidential tax and financial information. Deborah argued that they are the real party in interest even though the Authority is identified as the taxpayer for administrative rights purposes. Notwithstanding, Deborah noted that the requested records regarding an IRS examination of a bond issued for Deborah’s benefit, and would therefore necessarily include substantial information provided by Deborah in connection with the examination.

Deborah asserted that intervention is the only way to prevent disclosure of the requested records. Deborah argued that should the records be released, there is no remedy available to

prevent disclosure of its confidential tax information. Deborah contended that without intervention, its rights will not be fully protected. Thus, Deborah asserted that it is in the best position to defend against the improper disclosure of its confidential taxpayer information.

On October 6, 2015, the Complainant filed a response to Deborah's motion to intervene. The Complainant asserted that Deborah's motion should be denied on the basis that Deborah's inclusion would confuse and delay the process. The Complainant contended that Deborah and the Custodian made the same arguments regarding the interpretation of Section 6103. Additionally, the Complainant asserted that addressing the movant's interest is immaterial and would not affect the outcome of the matter.

On October 16, 2015, Deborah filed a reply to the Complainant's response. Deborah noted that the Complainant did not dispute that it was the real party in interest and had a unique interest in the current matter; only disputing that that the intervention would complicate and delay the resolution. Deborah reiterated that the tax documents at issue pertained to an IRS examination of bonds where Deborah was the bondholder, not the Custodian. Deborah stated that it produced the records that were delivered to the Custodian, who in turn forwarded them to the IRS as a result of the examination. Therefore, Deborah concluded that it should be allowed to intervene in the current matter.

On October 26, 2015, the Complainant filed a sur-reply, addressing the merits of the case, but did not address the intervenor issue.

Analysis

Sufficiency of Response

OPRA provides that a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g). Further, in Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the GRC held that ". . . [t]he Custodian's response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g)." Additionally, in Schwarz v. N.J. Dep't of Human Serv., GRC Complaint No. 2004-60 (February 2005), the GRC held that specific citations to the law that allows a denial of access are required at the time of the denial. See also Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010) (noting that N.J.S.A. 47:1A-5(g) requires a custodian of record to indicate the specific basis for noncompliance).

In the instant matter, the Complainant asserted that the Custodian denied his OPRA request without explanation. However, in accordance with Paff, GRC 2007-272 and Schwarz, GRC 2004-60, the Custodian cited to N.J.S.A. 47:1A-9 and Section 6103 as the basis for why the records were confidential and therefore withheld from access.

Accordingly, the Custodian's response to the Complainant's July 30, 2015 OPRA request was sufficient because she provided the Complainant with specific citations to the law that allowed for a denial of access. N.J.S.A. 47:1A-5(g). See Paff, GRC 2007-272, Schwarz, GRC 2004-60, and Renna, GRC 2008-86.

Motion to Intervene

In a motion to intervene, the GRC is guided by the court's decision in Gill, 404 N.J. Super. at 10-11, holding that:

In applying these regulations to determine whether intervention is required, the GRC must consider 'the nature and extent of the [the party requesting intervention's] interest in the outcome of the case' and whether that interest is "sufficiently different from that of any party so as to add measurable and constructively top the scope of the case." N.J.A.C. 1:1-16.3(a). The GRC must also consider "the prospect of confusion or undue delay arising from the potential intervenor's] inclusion, and other appropriate matters." Ibid.

Here, the Complainant sought correspondence and agreements between the Authority and the IRS regarding an examination into bonds issued to Deborah. Deborah filed a motion to intervene, asserting that the records were created by it and provided to the Custodian as part of the examination. Therefore, Deborah asserted that it has a unique interest in the outcome of the matter. The Complainant disagreed, asserting in part that the Authority is the taxpayer in this examination, and therefore remains the real party of interest. Additionally, the Complainant asserted that Deborah failed to provide any arguments that were not already put forth by the Custodian.

In reviewing the arguments and submissions by Deborah and the Complainant, the evidence favors granting Deborah's motion. While the Complainant presented evidence to show that the requested records are the Authority's taxpayer records for the purposes of the IRS examination, Deborah demonstrated its material involvement in the examination itself, certifying that it not only forwarded its own tax return information to the Authority by request, but also negotiated with the IRS directly via counsel. Thus, Deborah has a significant interest in the outcome of the matter, and sufficiently unique to distinguish itself from the Custodian.

Furthermore, while Deborah and the Custodian both argue the applicability of Section 6103, Deborah's submissions substantively expanded upon the Custodian's arguments. Additionally, Deborah clarified the records being sought, and asserted with specificity the applicable subsections of Section 6103, demonstrating that Deborah's involvement would not create confusion in the process.

Therefore, the Council should grant Deborah's motion to intervene, as the evidence in the demonstrates that Deborah has a unique and significant interest in the outcome of the matter, and its inclusion will not cause an undue delay or confusion from its inclusion. N.J.A.C. 1:1-16.3(a); Gill, 404 N.J. Super. at 10-11.

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.

Pursuant to N.J.S.A. 47:1A-9(a), the provisions of OPRA “shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to . . . any federal law [or] federal regulation.” The primary issue in this matter is whether Section 6103 bars the disclosure of tax returns and return information pursuant to an OPRA request. Because the GRC grants Deborah’s motion to intervene, its arguments on the merits are described herein, as are the Complainant’s responses.

Deborah agreed with the Custodian in that the records should be considered confidential under Section 6103. Deborah contended that the requested records constitute “return information” within the meaning under Section 6103(b)(2). Deborah asserted that under the statute, “returns” and “return information” are defined as:

(A) a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense

...

(D) any agreement under section 7121, and any similar agreement, and any background information related to such an agreement or request for such an agreement . . .

[Section 6103(b)(2).]

Deborah contended that Section 7121 of the Internal Revenue Code (“IRC”) pertains to “closing agreements,” which are agreements entered into between the IRS and a taxpayer to conclude an examination. Deborah argued that these documents were what the Complainant sought, thus classifying the records as return information. In support, Deborah cited in part Church of Scientology of Cal. v. IRS, 484 U.S. 9, 10 (1987) (“as a practical matter, ‘return information’ might include the report of an audit examination, internal IRS correspondence concerning a taxpayer’s claim, or a notice of deficiency issued by the IRS”), and Tax Analysts v. IRS, 53 F. Supp.2d 449 (D.D.C. 1999) (closing agreements constitute “return information” and are not subject to disclosure). Deborah noted that the Complainant did not dispute that the requested records qualified as return information in his complaint.

Accordingly, Deborah asserted that because the requested records are return information, disclosure of such records is governed by Section 6103. As also argued by the Custodian, Deborah

contended that the language of the statute clearly states that no officer or employee of the State shall disclose any return information.

Deborah disputed the Complainant's argument that the statute's definition of officers or employees of the state is limited only to law enforcement agencies, child support enforcement agencies, or to agencies administering a program defined under Section 6103(l)(7)(D). In support, Deborah cited Office of the Budget v. Campbell, 25 A.3d 1318, 1319 (Pa. Commonwealth Court 2011), where the court applied Section 6103 to the state without reference to any qualification.

Deborah noted that its interpretation of Section 6103 was consistent with Gelber, where the GRC held that:

United States law mandates that no officer or employee of the United States or any State "shall disclosed any [tax information, declaration of tax, or tax] return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise" 26 U.S.C. 6103 (2004).

[GRC 2011-148.]

Deborah also contended that the Complainant cannot show where Section 6103 compels the disclosure of tax information over the objections of both the Authority and Deborah. Furthermore, Deborah asserted that the Complainant's reliance on St. Regis was misplaced, as the case did not involve tax returns or return information. 368 U.S. at 219.

In his October 6, 2015 response, the Complainant contended that the canons of statutory interpretation, legislative history, and case law support his interpretation of Section 6103(a)(2) as limiting the prohibition on disclosure to State and local officers who have access to return information under Section 6103 or 6104(c). The Complainant argued that neither Deborah nor the Custodian claimed that an officer or employee of the Authority had or has access to return information under Section 6103 or 6104(c). The Complainant referred to the legislative history behind Section 6103 wherein the applicability of its disclosure restrictions was intended for tax return information originating from the IRS. The Complainant also asserted that a majority of circuit courts have adopted his interpretation of Section 6103. See Ryan v. United States, 74 F.3d 1161, 1163 (11th Cir. 1996); Stowitz v. United States, 831 F.2d 893, 896-97 (9th Cir. 1987), cert. denied, 485 U.S. 1033 (1988); Tavery v. United States, 32 F.3d 1423, 1430-31 (concurring opinion) (10th Cir. 1994); Baskin v. United States, 135 F.3d 338, 343 (5th Cir. 1998); Lomont v. O'Neill, 285 F.3d 9, 15 (D.C. Cir. 2002).

The Complainant asserted that in this matter, Authority employees obtained or prepared the requested documents due to an audit of the Authority's bonds and did not acquire them from the IRS pursuant to Section 6103. The Complainant argued that if those employees did receive the documents via Section 6103, they would be subject to civil and criminal penalties if they disseminated those records to outside counsel or to ratings agencies. In contrast, the Complainant asserted that similar audit documents are publicly disclosed on an almost daily basis. The Complainant attached a copy of a closing agreement with the IRS as an example. The Complainant

concluded that Section 6103 is not as broad as asserted by the Custodian and Deborah and does not apply to the requested records.

In its October 15, 2015 reply, Deborah contended that the Complainant's interpretation of Section 6103's confidentiality provisions would lead to an absurd result of providing an absolute disclosure bar for federal agencies, yet bar only a random assortment of state agencies.

Deborah also cited Fedele v. Harris, 69 F. Supp.3d 313 (N.D.N.Y. 2014), asserting that the court did not engage in an analysis regarding how the state agency obtained the tax return information, and interpreted Section 6103(a)(2) to be applicable to all state employees or officers without qualification. Deborah noted that the Complainant's list of circuit cases does not address the applicability of Section 6103(a)(2) to state officers and employees. Additionally, Deborah argued that the cases do not address closing agreements, or that Section 6103(b)(2)(D) was added to the statute to broadly apply the confidentiality protections to closing agreements and related documents.

Deborah noted that the Complainant did not dispute that the requested records qualify as return information under Section 6103(b)(2). Deborah argued that the requested records fall under the definition of return information listed under Section 6103(b)(2)(A) and 6103(b)(2)(D). Deborah added that the default rule is that return information is confidential unless the Complainant can point to an exception. See Aloe Vera of Am., Inc. v. United States, 699 F.3d 1153 (9th Cir. 2012) ("Tax returns and tax return information must be kept confidential, unless a statutory exception applies."). Deborah asserted that the Complainant had not done so.

In his October 26, 2015 sur-reply, the Complainant maintained that Section 6103 is applicable to a limited pool of state officers and employees as defined under the statute, and only those who obtained the tax return information from the IRS. Additionally, the Complainant specifically discussed State of Florida v. Joseph, 94 So.3d 672 (Fla. App. 2012), where the appeals court reversed a trial court's finding that state employees violated Section 6103 by disseminating tax returns and return information not obtained via the IRS. The Complainant contended that the appeals court interpreted Section 6103 narrowly, noted that the records were not obtained from the IRS, and therefore held that there was no unlawful disclosure of those records. The Complainant asserted that the GRC should refer to the case in its analysis and interpretation of Section 6103.

The Complainant also contended that the records in question are the tax records of the Authority, and not Deborah. The Complainant asserted that during the examination process, it was unclear how the disclosure provisions would apply to bond examinations, so the IRS provided a disclosure guide for reference.⁵ The Complainant noted that the guide advises IRS employees to treat the records obtained from the bond issuer as the Authority's records, even if such records were obtained from a third party. Therefore, the Complainant contended that the records in question are the Authority's for the purposes of Section 6103.

Upon review of the submissions and arguments by the parties, the GRC agrees with the Custodian and Deborah in that the requested records are protected under Section 6103,

⁵ The Complainant attached a copy of this guide, titled Disclosure & Privacy Law Reference Guide, Ch. 14, (Oct. 2012) ("Disclosure Guide") within his sur-reply.

notwithstanding who the actual “taxpayer” is in this matter. Both Church, 792 F.2d at 10 and Tax Analysts, 53 F. Supp.2d at 452 support the contention that the requested records fall within the definition of “return information” set forth under Section 6103(b)(2)(A) and 6103(b)(2)(D). Moreover, the guide provided by the Complainant states that:

Information *collected or received* by the IRS relating to compliance with the tax-exempt bond provisions involves the liability or potential liability of specific persons under the [IRC]. As such, it is return information protected by section 6103.

[Disclosure Guide at 14-1 (emphasis added).]

Therefore, the general rule that “returns and return information shall be confidential” applies to the requested records. Section 6103(a).

With that established, the requested records may only be disclosed in accordance with the subsections described under Section 6103. Church, 792 F.2d at 11-12. Here, the Complainant could not cite a subsection which mandates or allows the disclosure of return information to private third parties via a public records request. Nor did the caselaw cited by the Complainant pertain to such a situation. Thus, the return information remains confidential in accordance with federal law.

Therefore, the Custodian did not unlawfully deny access to the Complainant’s July 30, 2015 OPRA request. N.J.S.A. 47:1A-6. The request seeks tax return information that is protected from disclosure pursuant to Section 6103. N.J.S.A. 47:1A-9(a); Church, 792 F.2d at 10-12; Tax Analysts, 53 F. Supp.2d at 452.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian’s response to the Complainant’s July 30, 2015 OPRA request was sufficient because she provided the Complainant with specific citations to the law that allowed for a denial of access. N.J.S.A. 47:1A-5(g). See Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), Schwarz v. N.J. Dep’t of Human Serv., GRC Complaint No. 2004-60 (February 2005), and Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010).
2. The Council should grant Deborah’s motion to intervene, as the evidence in the demonstrates that Deborah has a unique and significant interest in the outcome of the matter, and its inclusion will not cause an undue delay or confusion from its inclusion. N.J.A.C. 1:1-16.3(a); Gill v. N.J. Dep’t of Banking & Ins., 404 N.J. Super. 1, 10-11 (App. Div. 2008).
3. The Custodian did not unlawfully deny access to the Complainant’s July 30, 2015 OPRA request. N.J.S.A. 47:1A-6. The request seeks tax return information that is protected from disclosure pursuant to 26 U.S.C. § 6103. N.J.S.A. 47:1A-9(a); Church

of Scientology of Cal. v. IRS, 484 U.S. 9, 10-12 (1987); Tax Analysts v. IRS, 53 F. Supp.2d 449, 452 (D.D.C. 1999).

Prepared By: Samuel A. Rosado
Staff Attorney

April 23, 2019