



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

March 28, 2023 Government Records Council Meeting

Rick Robinson
Complainant

Complaint No. 2015-410

v.

NJ Department of Human Services,
Division of Medical Assistance and Health Services
Custodian of Record

At the March 28, 2023 public meeting, the Government Records Council (“Council”) considered the March 21, 2023 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Custodian Pushko complied with the Council’s January 31, 2023 Interim Order because she provided a certification to the Executive Director confirming that she complied with the findings of the Council’s *in camera* examination in a timely manner.
2. Although Custodian Rosenheim did not bear her burden of proving that she lawfully denied access to the requested records, or parts thereof, the evidence of record does not indicate that Custodian Rosenheim’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Custodian Rosenheim’s actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. Further, the evidence of record reveals that successor Custodian Pushko complied with the Council’s January 31, 2023 Interim Order in a timely manner, and as such, did not violate any provision of OPRA.

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 28th Day of March 2023

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: April 3, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
March 28, 2023 Council Meeting**

**Rick Robinson¹
Complainant**

GRC Complaint No. 2015-410

v.

**New Jersey Department of Human Services,
Division of Medical Assistance and Health Services²
Custodial Agency**

Records Relevant to Complaint: “Any communications between CMS and the New Jersey Department of Human Services regarding Medicaid State Plan Amendments to State Plan Attachment 4.19-B, Reimbursement for Pharmacy Services, or any other part of the State Plan addressing pharmacy reimbursement.”

Custodian of Record: Kellie L.K. Pushko³

Request Received by Custodian: December 9, 2015

Responses Made by Custodian: December 9, 17, and 21, 2015

GRC Complaint Received: December 23, 2015

Background

January 31, 2023 Council Meeting:

At its January 31, 2023 public meeting, the Government Records Council (“Council”) considered the January 24, 2023 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian complied with the Council’s January 31, 2019 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Council, together with a document index and nine (9) copies of the unredacted records ordered by the Council for the *in camera* examination.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and**

¹ No legal representation listed on record.

² No legal representation listed on record.

³ The original Custodian was Dianna Rosenheim.

simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.

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.

Procedural History:

On February 2, 2023, the Council distributed its January 31, 2023 Interim Order to all parties. On February 23, 2023, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Council.

Analysis

Compliance

On January 31, 2023, the Council ordered the above-referenced compliance. On February 2, 2023, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Therefore, compliance was due on or before February 9, 2023. On February 23, 2023, the Custodian forwarded certified confirmation of compliance to the Council.

In addition to certifying that she complied with the findings of the Council's *in camera* examination pursuant to the terms of the Council's January 31, 2023 Order, the Custodian also certified that she has been the Custodian since July 2020, when the prior custodian of records, Dianna Rosenheim, assumed a position with a different agency. The Custodian certified that the Council's January 31, 2023 Order was received via regular mail on February 17, 2023. The Custodian further certified that in its *In Camera* Findings and Recommendations of the Executive Director ("ICFR"), "the GRC indicate[d] that two emails (on May 3 and 10, 2021) were sent to the Custodian, however, I would like to clarify that those emails were not received by me, as I assume they were being sent to the prior Custodian's inactive email address[.]" (Emphasis in original.)

The Custodian is correct that the GRC in its ICFR did state that the GRC e-mailed the Custodian on May 3, 2021, and again on May 10, 2021. The GRC also stated in the ICFR that the Custodian failed to respond to the GRC. Those e-mails were sent to the Custodian of Record, Dianna Rosenheim, at her e-mail address on file with the GRC. The GRC had no reason to believe that anyone other than Ms. Rosenheim was the Custodian. Ms. Rosenheim certified in the Statement of Information that she was the Custodian. Subsequently, in the certification of compliance in response to the Council's January 31, 2019 Interim Order, Ms. Rosenheim again certified that she was the Custodian. At no time prior to Custodian Pushko's February 23, 2023 certification was the GRC notified that there was a change in the agency's custodian of records. Moreover, the GRC's e-mails to Ms. Rosenheim were not returned as "undeliverable."

Although the GRC was unaware that there was a change in the custodian of records for the agency, the GRC distributed its January 31, 2023 Order via e-mail and regular mail, as per its standard practice. Custodian Pushko certified that she received the regular mailing on February 17, 2023, and the evidence of record reveals that she submitted the certification of compliance to the GRC three (3) business days later, or on February 23, 2023. As such, Custodian Pushko complied with the terms of the Council’s Order “within five (5) business days from receipt of [the] Order.”

Therefore, Custodian Pushko complied with the Council’s January 31, 2023 Interim Order because she provided a certification to the Executive Director confirming that she complied with the findings of the Council’s *in camera* examination in a timely manner.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA] and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically, OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA] and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, although Custodian Rosenheim did not bear her burden of proving that she lawfully denied access to the requested records, or parts thereof, the evidence of record does not indicate that Custodian Rosenheim’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Custodian Rosenheim’s actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. Further, the evidence of record reveals that successor Custodian Pushko complied with the Council’s January 31, 2023 Interim Order in a timely manner, and as such, did not violate any provision of OPRA.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Custodian Pushko complied with the Council's January 31, 2023 Interim Order because she provided a certification to the Executive Director confirming that she complied with the findings of the Council's *in camera* examination in a timely manner.

2. Although Custodian Rosenheim did not bear her burden of proving that she lawfully denied access to the requested records, or parts thereof, the evidence of record does not indicate that Custodian Rosenheim's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, Custodian Rosenheim's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. Further, the evidence of record reveals that successor Custodian Pushko complied with the Council's January 31, 2023 Interim Order in a timely manner, and as such, did not violate any provision of OPRA.

Prepared By: John E. Stewart

March 21, 2023



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

INTERIM ORDER

January 31, 2023 Government Records Council Meeting

Rick Robinson
Complainant

Complaint No. 2015-410

v.

NJ Department of Human Services
Division of Medical Assistance and Health Services
Custodian of Record

At the January 31, 2023 public meeting, the Government Records Council (“Council”) considered the January 24, 2023 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 January 31, 2019 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Council, together with a document index and nine (9) copies of the unredacted records ordered by the Council for the *in camera* examination.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.¹**
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.

¹ 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.

Interim Order Rendered by the
Government Records Council
On The 31st Day of January 2023

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: February 2, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director
January 31, 2023 Council Meeting**

**Rick Robinson¹
Complainant**

GRC Complaint No. 2015-410

v.

**New Jersey Department of Human Services,
Division of Medical Assistance and Health Services²
Custodial Agency**

Records Relevant to Complaint: “Any communications between CMS and the New Jersey Department of Human Services regarding Medicaid State Plan Amendments to State Plan Attachment 4.19-B, Reimbursement for Pharmacy Services, or any other part of the State Plan addressing pharmacy reimbursement.”

Custodian of Record: Dianna Rosenheim

Request Received by Custodian: December 9, 2015

Responses Made by Custodian: December 9, 17, and 21, 2015

GRC Complaint Received: December 23, 2015

Records Submitted for *In Camera* Examination: The records listed in Table 2 of the Findings and Recommendations of the Council Staff dated January 22, 2019, incorporated by reference within the Council’s Interim Order dated January 31, 2019.

Background

January 31, 2019 Council Meeting:

At its January 31, 2019 public meeting, the Government Records Council (“Council”) considered the January 22, 2019 Findings and Recommendations of the Council Staff 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. Because the Complainant paid the Custodian \$793.16 in requested special service charges, and the Custodian subsequently provided the Complainant with approximately 250 pages of responsive records in return for said payment on March 7, 2016, the issue of whether special service charges were appropriate in this matter is moot.

¹ No legal representation listed on record.

² No legal representation listed on record.

2. Pursuant to Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the records relevant to this complaint which are listed in Table 2 above, to determine the validity of the Custodian's assertion that they were lawfully denied in whole or in part because said records contain advisory, consultative or deliberative material exempt from access pursuant to N.J.S.A. 47:1A-1.1.
3. **The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see paragraph 2 above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule R. 1:4-4, that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On February 4, 2019, the Council distributed its January 31, 2019 Interim Order to all parties. On February 11, 2019, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Council.

Upon reviewing the records submitted for the *in camera* examination, the GRC noted that many of the e-mails were included as part of a string of e-mails and were difficult to examine because many were out of sequential order and not marked with, or referenced by, the record number (the number was often cut off or partially cut off when the page was resized during the copying process). For this reason, on May 3, 2021, the GRC e-mailed the Custodian and informed her that the GRC was having difficulty understanding the records and document index submitted for the *in camera* examination. The GRC asked the Custodian to resubmit the document index and indicate precisely the material that was withheld from disclosure. The Custodian failed to respond to the GRC's May 3, 2021 e-mail.

On May 10, 2021, the GRC again e-mailed the Custodian and renewed its request for clarification of the records submitted for the *in camera* examination. The Custodian failed to respond to the GRC's May 10, 2021 e-mail.

Analysis

Compliance

On January 31, 2019, the Council ordered the above-referenced compliance. On February 4, 2019, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Therefore, compliance was due on or

before February 11, 2019. On February 11, 2019, the Custodian forwarded certified confirmation of compliance to the Council, together with a document index and nine (9) copies of the unredacted records ordered by the Council for the *in camera* examination.

Therefore, the Custodian complied with the Council’s January 31, 2019 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Council, together with a document index and nine (9) copies of the unredacted records ordered by the Council for the *in camera* examination.

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful. N.J.S.A. 47:1A-6.

All records denied by the Custodian were denied as advisory, consultative or deliberative (“ACD”) material exempt from access pursuant to N.J.S.A. 47:1A-1.1. The GRC conducted an *in camera* examination on the submitted records. The results of this examination are set forth in the following table:

Record Number³	Description of Record	Findings of the <i>In Camera</i> Examination⁴
1	E-mail from McLaughlin to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/30/11 with attachment	The referenced e-mail is not ACD material and shall be disclosed. The attachment to the e-mail is pending approval and therefore is ACD material and was lawfully denied as such by the Custodian.
	E-mail from Balbuena to McLaughlin, Popkin,	The referenced e-mail is not

³ The records as numbered correspond to the record numbers in Table 2 of the Findings and Recommendations of the Council Staff dated January 22, 2019 under the same GRC complaint number.

⁴ Unless expressly identified for redaction, everything in the record shall be disclosed. For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. If redaction software is unavailable, the GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy, then provide a copy of the blacked-out record to the requester.

2	Rose & Sweeney dated 12/12/11	ACD material and shall be disclosed. The attachment is ACD material and was lawfully denied as such by the Custodian.
3a ⁵	E-mail from McLaughlin to Balbuena dated 03/02/12	Redact the first sentence as ACD material. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
3b	E-mail from Balbuena to McLaughlin dated 03/01/12	Redact second sentence as ACD material. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
3c	E-mail from McLaughlin to Patterson and Balbuena dated 03/01/12	The e-mail does not contain ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
3d	E-mail from Patterson to Balbuena and McLaughlin dated 03/01/12	The e-mail does not contain ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
3e	E-mail from Balbuena to McLaughlin and Patterson dated 03/01/12	The e-mail does not contain ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
4a	E-mail from Balbuena to McLaughlin dated 06/13/12	Redact the first and second paragraphs in the body of the e-mail as ACD material. The attachment is ACD material and was lawfully denied as such by the Custodian.
4b	E-mail from McLaughlin to Balbuena dated 02/14/12	The e-mail does not contain ACD material and shall be disclosed. If attached, the

⁵ Letters following the record number indicate e-mails within a string.

		attachment is ACD material and was lawfully denied as such by the Custodian.
4c	E-mail from Balbuena to McLaughlin dated 02/14/12	Redact sentence number 2 as ACD material. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
4d	E-mail from McLaughlin to Balbuena dated 02/13/12	Redact the paragraph in the e-mail body as ACD material. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
5a	E-mail from McLaughlin to Balbuena dated 07/16/12 with attachment	Redact first and second sentences as ACD material. The attachment to the e-mail is ACD material and was lawfully denied as such by the Custodian.
5b	E-mail from Balbuena to McLaughlin dated 06/13/12	See 4a above.
5c	E-mail from McLaughlin to Balbuena dated 02/14/12	See 4b above.
5d	E-mail from Balbuena to McLaughlin dated 02/14/12	See 4c above.
5e	E-mail from McLaughlin to Balbuena dated 02/13/12	See 4d above.
6a	E-mail from Balbuena to McLaughlin dated 07/16/12	The referenced e-mail is not ACD material and shall be disclosed. Attachment is ACD material and was lawfully denied as such by the Custodian.
6b	E-mail from McLaughlin to Balbuena dated 07/16/12	See 5a above.
6c	E-mail from Balbuena to McLaughlin dated 06/13/12	See 4a above.
6d	E-mail from McLaughlin to Balbuena dated 02/14/12	See 4b above.
6e	E-mail from Balbuena to McLaughlin dated 02/14/12	See 4c above.
7a	E-mail from McLaughlin to Balbuena dated 07/31/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attachment is ACD material

		and was lawfully denied as such by the Custodian.
7b	E-mail from Balbuena to McLaughlin dated 07/30/12	Redact the second and third sentences in the body of the e-mail as ACD material. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
7c	E-mail from McLaughlin to Balbuena dated 07/16/12	See 5a above.
7d	E-mail from Balbuena to McLaughlin dated 06/13/12	See 4a above.
7e	E-mail from McLaughlin to Balbuena dated 02/14/12	See 4b above.
7f	E-mail from Balbuena to McLaughlin dated 07/14/12	See 4c above.
7g	E-mail from McLaughlin to Balbuena dated 02/13/12	See 4d above.
8a	E-mail from Balbuena to McLaughlin dated 08/15/12	Redact the second and third sentences in the body of the e-mail as ACD material. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
8b	E-mail from McLaughlin to Balbuena dated 07/16/12	See 7c above.
8c	E-mail from Balbuena to McLaughlin dated 06/13/12	See 7d above.
8d	E-mail from McLaughlin to Balbuena dated 02/14/12	See 7e above.
8e	E-mail from Balbuena to McLaughlin dated 07/14/12	See 7f above.
8f	E-mail from McLaughlin to Balbuena dated 02/13/12	See 7g above.
9a	E-mail from Balbuena to McLaughlin dated 08/22/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
9b	E-mail from McLaughlin to Balbuena dated 08/22/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attachment is ACD material

		and was lawfully denied as such by the Custodian.
9c	E-mail from Balbuena to McLaughlin dated 08/22/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
9d	E-mail from McLaughlin to Balbuena dated 08/22/12	Redact the body of the e-mail as ACD material because the material is advisory in nature. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
9e	E-mail from Balbuena to McLaughlin dated 08/22/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
9f	E-mail from McLaughlin to Balbuena dated 08/22/12	Redact the first sentence in the body of the e-mail as ACD material because the material is advisory in nature. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
10	E-mail from McLaughlin to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/11/12	Redact the first paragraph in the body of the e-mail as ACD material. Attachment is ACD material and was lawfully denied as such by the Custodian.
11a	E-mail from Salce to McLaughlin dated 10/18/12	Redact the first sentence in the body of the e-mail as ACD material. Attachment is ACD material and was lawfully denied as such by the Custodian.
11b	E-mail from Balbuena to Salce dated 10/18/12	The e-mail does not contain ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as

		such by the Custodian.
11c	E-mail from Balbuena to McLaughlin dated 10/15/12	The e-mail does not contain ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
11d	E-mail from McLaughlin to Balbuena dated 10/12/12	The e-mail does not contain ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
11e	E-mail from Balbuena to McLaughlin dated 10/11/12	Redact third sentence as ACD material. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
11f	E-mail from McLaughlin to Balbuena dated 10/11/12	The e-mail does not contain ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
11g	E-mail from Balbuena to McLaughlin dated 10/11/12	Redact first sentence in 2 nd paragraph as ACD material. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
11h	E-mail from McLaughlin to Balbuena dated 09/11/12	The e-mail does not contain ACD material and shall be disclosed. If attached, the attachment is ACD fully denied as such by the Custodian.
11i	E-mail from Balbuena to McLaughlin dated 09/11/12	The e-mail does not contain ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
11j	E-mail from McLaughlin to CMS SPA_Waivesr_NewYork_R02 dated 09/11/12	See 10 above.

12a	E-mail from McLaughlin to Balbuena dated 10/15/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
12b	E-mail from Balbuena to McLaughlin dated 10/15/12	See 11c above.
12c	E-mail from McLaughlin to Balbuena dated 10/12/12	See 11d above.
12d	E-mail from Balbuena to McLaughlin dated 10/11/12	See 11e above.
12e	E-mail from McLaughlin to Balbuena dated 10/11/12	See 11f above.
12f	E-mail from Balbuena to McLaughlin dated 10/11/12	See 11g above.
12g	E-mail from McLaughlin to Balbuena dated 09/11/12	See 11h above.
12h	E-mail from Balbuena to McLaughlin dated 09/11/12	See 11i above.
12i	E-mail from McLaughlin to CMS SPA_Waivesr_NewYork_R02 dated 09/11/12	See 10 above.
13a	E-mail from Salce to McLaughlin dated 10/02/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
13b	E-mail from McLaughlin to Salce dated 10/02/12	Redact 2 nd sentence as ACD material. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
14a	E-mail from Salce to McLaughlin dated 10/18/12	The e-mail does not contain ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
14b	E-mail from McLaughlin to Salce dated 10/18/12	The e-mail does not contain ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.

14c	E-mail from Salce to McLaughlin dated 10/01/12	Redact the first sentence in the second paragraph as ACD material. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
15a	E-mail from McLaughlin to Salce, Balbuena and Simananda dated 10/24/12	Redact the first sentence in the body of the e-mail as ACD material. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
15b	E-mail from Salce to McLaughlin dated 10/18/12	See 11a above.
15c	E-mail from Balbuena to Salce dated 10/18/12	See 11b above.
15d	E-mail from Balbuena to McLaughlin dated 10/15/12	See 11c above.
15e	E-mail from McLaughlin to Balbuena dated 10/12/12	See 11d above.
15f	E-mail from Balbuena to McLaughlin dated 10/11/12	See 11e above.
15g	E-mail from McLaughlin to Balbuena dated 10/11/12	See 11f above.
15h	E-mail from Balbuena to McLaughlin dated 10/11/12	See 11g above.
15i	E-mail from McLaughlin to Balbuena dated 09/11/12	See 11h above.
15j	E-mail from Balbuena to McLaughlin dated 09/11/12	See 11i above.
15	E-mail from McLaughlin to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/11/12	See 10 above.
16a	E-mail from Balbuena to McLaughlin dated 10/24/12	Redact the body of the e-mail as ACD material. Attachment is ACD material and was lawfully denied as such by the Custodian.
16b	E-mail from McLaughlin to Salce, Balbuena, and Simananda dated 10/24/12	See 15a above.
17	E-mail from McLaughlin to Salce, Balbuena and Simananda dated 10/24/12	Redact the first sentence in the body of the e-mail as ACD material. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.

18a	E-mail from Balbuena to McLaughlin dated 10/24/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
18b	E-mail from McLaughlin to Balbuena dated 10/24/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
18c	E-mail from Balbuena to McLaughlin dated 10/24/12	See 16a above.
18d	E-mail from McLaughlin to Salce, Balbuena, and Simananda dated 10/24/12	See 15a above.
18e	E-mail from Salce to McLaughlin dated 10/18/12	See 15b above.
18f	E-mail from Balbuena to Salce dated 10/18/12	See 15c above.
18g	E-mail from Balbuena to McLaughlin dated 10/15/12	See 15d above.
18h	E-mail from McLaughlin to Balbuena dated 10/12/12	See 15e above.
18i	E-mail from Balbuena to McLaughlin dated 10/11/12	See 15f above.
18j	E-mail from McLaughlin to Balbuena dated 10/11/12	See 15g above.
18k	E-mail from Balbuena to McLaughlin dated 10/11/12	See 15h above.
18l	E-mail from McLaughlin to Balbuena dated 09/11/12	See 15i above.
18m	E-mail from Balbuena to McLaughlin dated 09/11/12	See 15j above.
18n	E-mail from McLaughlin to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/11/12	See 10 above.
19a	E-mail from Salce to McLaughlin dated 10/24/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
19b	E-mail from McLaughlin to Salce dated 10/24/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, the

		attachment is ACD material and was lawfully denied as such by the Custodian.
19c	E-mail from Salce to McLaughlin dated 10/24/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attachment is ACD material and was lawfully denied as such by the Custodian.
19d	E-mail from McLaughlin to Salce, Balbuena, and Simananda dated 10/24/12	See 18d above.
19e	E-mail from Salce to McLaughlin dated 10/18/12	See 18e above.
19f	E-mail from Balbuena to Salce dated 10/18/12	See 18f above.
19g	E-mail from Balbuena to McLaughlin dated 10/15/12	See 18g above.
19h	E-mail from McLaughlin to Balbuena dated 10/12/12	See 18h above.
19i	E-mail from Balbuena to McLaughlin dated 10/11/12	See 18i above.
19j	E-mail from McLaughlin to Balbuena dated 10/11/12	See 18j above.
19k	E-mail from Balbuena to McLaughlin dated 10/11/12	See 18k above.
19l	E-mail from McLaughlin to Balbuena dated 09/11/12	See 18l above.
19m	E-mail from Balbuena to McLaughlin dated 09/11/12	See 18m above.
19n	E-mail from McLaughlin to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/11/12	See 10 above.
20a	E-mail from McLaughlin to Salce and Simananda dated 11/30/12	The referenced e-mail is not ACD material and shall be disclosed. If attached, NJ SPA 11-14 is ACD material and was lawfully denied as such by the Custodian. If attached, Attachment 4.19-B was approved on November 21, 2012 and therefore is not ACD material and shall be disclosed.
20b	E-mail from Salce to McLaughlin and Simananda dated 11/30/12	Redact body of the e-mail as ACD material. If attached, NJ SPA 11-14 is ACD material and was lawfully denied as

		such by the Custodian. If attached, Attachment 4.19-B was approved on November 21, 2012 and therefore is not ACD material and shall be disclosed.
20c	E-mail from McLaughlin to Salce and Simananda dated 11/30/12	Redact the first sentence as ACD material. If attached, NJ SPA 11-14 is ACD material and was lawfully denied as such by the Custodian. If attached, Attachment 4.19-B was approved on November 21, 2012 and therefore is not ACD material and shall be disclosed.
20d	E-mail from Salce to McLaughlin and Simananda dated 11/29/12	Redact the first paragraph as ACD material. If attached, NJ SPA 11-14 is ACD material and was lawfully denied as such by the Custodian. If attached, Attachment 4.19-B was approved on November 21, 2012 and therefore is not ACD material and shall be disclosed.
20e	E-mail from McLaughlin to Salce, Balbuena, and Simananda dated 10/24/12	See 19d above.
20f	E-mail from Salce to McLaughlin dated 10/18/12	See 19e above.
20g	E-mail from Balbuena to Salce dated 10/18/12	See 19f above.
20h	E-mail from Balbuena to McLaughlin dated 10/15/12	See 19g above.
20i	E-mail from McLaughlin to Balbuena dated 10/12/12	See 19h above.
20j	E-mail from Balbuena to McLaughlin dated 10/11/12	See 19i above.
20k	E-mail from McLaughlin to Balbuena dated 10/11/12	See 19j above.
20l	E-mail from Balbuena to McLaughlin dated 10/11/12	See 19k above.
20m	E-mail from McLaughlin to Balbuena dated 09/11/12	See 19l above.
20n	E-mail from Balbuena to McLaughlin dated 09/11/12	See 19m above.

20o	E-mail from McLaughlin to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/11/12	See 10 above.
21a	E-mail from McLaughlin to Salce and Simananda dated 11/30/12	See 20C above.
21b	E-mail from Salce to McLaughlin and Simananda dated 11/29/12	See 20d above.
21c	E-mail from McLaughlin to Salce, Balbuena, and Simananda dated 10/24/12	See 20e above.
21d	E-mail from Salce to McLaughlin dated 10/18/12	See 20f above.
21e	E-mail from Balbuena to Salce dated 10/18/12	See 20g above.
21f	E-mail from Balbuena to McLaughlin dated 10/15/12	See 20h above.
21g	E-mail from McLaughlin to Balbuena dated 10/12/12	See 20i above.
21h	E-mail from Balbuena to McLaughlin dated 10/11/12	See 20j above.
21i	E-mail from McLaughlin to Balbuena dated 10/11/12	See 20k above.
21j	E-mail from Balbuena to McLaughlin dated 10/11/12	See 20l above.
21k	E-mail from McLaughlin to Balbuena dated 09/11/12	See 20m above.
21l	E-mail from Balbuena to McLaughlin dated 09/11/12	See 20n above.
21m	E-mail from McLaughlin to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/11/12	See 10 above.
22a	E-mail from Salce to McLaughlin and Simananda dated 02/12/13	The referenced e-mail is not ACD material and shall be disclosed. Attachment NJ SPA 11-14 was approved on November 21, 2012 and therefore is not ACD material and shall be disclosed.
22b	E-mail from McLaughlin to Salce and Simananda dated 02/12/13	The referenced e-mail is not ACD material and shall be disclosed. Attachment NJ SPA 11-14 was approved on November 21, 2012 and therefore is not ACD material and shall be disclosed.
22c	E-mail from McLaughlin to Salce and Simananda dated 11/30/12	The referenced e-mail is not ACD material and shall be

		disclosed. Attachment NJ SPA 11-14 was approved on November 21, 2012 and therefore is not ACD material and shall be disclosed.
22d	E-mail from Salce to McLaughlin and Simananda dated 11/30/12	The referenced e-mail is not ACD material and shall be disclosed. Attachment NJ SPA 11-14 was approved on November 21, 2012 and therefore is not ACD material and shall be disclosed.
22e	E-mail from McLaughlin to Salce and Simananda dated 11/30/12	See 20a above.
22f	E-mail from Salce to McLaughlin and Simananda dated 11/30/12	See 20b above.
22g	E-mail from McLaughlin to Salce and Simananda dated 11/30/12	See 20c above.
22h	E-mail from Salce to McLaughlin and Simananda dated 11/29/12	See 20d above.
22i	E-mail from McLaughlin to Salce, Balbuena, and Simananda dated 10/24/12	See 20e above.
22j	E-mail from Salce to McLaughlin dated 10/18/12	See 20f above.
22k	E-mail from Balbuena to Salce dated 10/18/12	See 20g above.
22l	E-mail from Balbuena to McLaughlin dated 10/15/12	See 20h above.
22m	E-mail from McLaughlin to Balbuena dated 10/12/12	See 20i above.
22n	E-mail from Balbuena to McLaughlin dated 10/11/12	See 20j above.
22o	E-mail from McLaughlin to Balbuena dated 10/11/12	See 20k above.
22p	E-mail from Balbuena to McLaughlin dated 10/11/12	See 20l above.
22q	E-mail from McLaughlin to Balbuena dated 09/11/12	See 20m above.
22r	E-mail from Balbuena to McLaughlin dated 09/11/12	See 20n above.
22s	E-mail from McLaughlin to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/11/12	See 10 above.
23a	E-mail from Salce to McLaughlin dated 02/12/13	The referenced e-mail is not ACD material and shall be disclosed. Attachment NJ SPA

		11-14 was approved on November 21, 2012 and therefore is not ACD material and shall be disclosed.
23b	E-mail from McLaughlin to Salce dated 02/12/13	The referenced e-mail is not ACD material and shall be disclosed. Attachment NJ SPA 11-14 was approved on November 21, 2012 and therefore is not ACD material and shall be disclosed.
23c	E-mail from Salce to McLaughlin and Simananda dated 02/12/13	See 22a above.
23d	E-mail from McLaughlin to Salce and Simananda dated 02/12/13	See 22b above.
23e	E-mail from McLaughlin to Salce and Simananda dated 11/30/12	See 22c above.
23f	E-mail from Salce to McLaughlin and Simananda dated 11/30/12	See 22d above.
23g	E-mail from McLaughlin to Salce and Simananda dated 11/30/12	See 22e above.
23h	E-mail from Salce to McLaughlin and Simananda dated 11/30/12	See 22f above.
23i	E-mail from McLaughlin to Salce and Simananda dated 11/30/12	See 22g above.
23j	E-mail from Salce to McLaughlin and Simananda dated 11/29/12	See 22h above.
23k	E-mail from McLaughlin to Salce, Balbuena, and Simananda dated 10/24/12	See 22i above.
23l	E-mail from Salce to McLaughlin dated 10/18/12	See 22j above.
23m	E-mail from Balbuena to Salce dated 10/18/12	See 22k above.
23n	E-mail from Balbuena to McLaughlin dated 10/15/12	See 22l above.
23o	E-mail from McLaughlin to Balbuena dated 10/12/12	See 22m above.
23p	E-mail from Balbuena to McLaughlin dated 10/11/12	See 22n above.
23q	E-mail from McLaughlin to Balbuena dated 10/11/12	See 22o above.
23r	E-mail from Balbuena to McLaughlin dated 10/11/12	See 22p above.
23s	E-mail from McLaughlin to Balbuena dated 09/11/12	See 22q above.

23t	E-mail from Balbuena to McLaughlin dated 09/11/12	See 22r above.
23u	E-mail from McLaughlin to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/11/12	See 10 above.
24a	E-mail from Stokley to Popkin dated 12/23/09	The referenced e-mail is not ACD material and shall be disclosed. The attached letter dated December 23, 2009, identified as SPA 09-05, seeks advice/information; therefore it constitutes ACD material lawfully denied by the Custodian.
24b	E-mail from Stokley to Springer dated 12/23/09	The body of the referenced e-mail constitutes ACD material and shall not be disclosed. If attached, the attached letter dated December 23, 2009, identified as SPA 09-05, seeks advice/information; therefore it constitutes ACD material lawfully denied by the Custodian.
24c	E-mail from Alberino to Stokley dated 12/23/09	The body of the referenced e-mail constitutes ACD material and shall not be disclosed. If attached, the attached letter dated December 23, 2009, identified as SPA 09-05, seeks advice/information; therefore it constitutes ACD material lawfully denied by the Custodian.
24d	E-mail from McKesson to Moscovic dated 12/23/09	The referenced e-mail is not ACD material and shall be disclosed. The attachment is ACD material and was lawfully denied as such by the Custodian.
25a	E-mail from Stokley to Harr, Keevey, Popkin, Springer and Azoia dated 05/05/10	The referenced e-mail is not ACD material and shall be disclosed. The attachment contains a proposed State Plan Amendment to the Centers for Medicare and Medicaid and

		<p>proposed amendments to the Pharmaceutical Services and Medical Supplier Manuals that are pending approval and therefore the attachments are ACD material lawfully denied as such by the Custodian. However, copies of the Legal Notices placed in the Trentonian on June 27, 2009 and The Star Ledger on September 21, 2009 are not ACD material and shall be disclosed.</p>
25b	E-mail from Stokley to CMS SPA_Waiver_NewYork_R02	Redact all content in the body of the e-mail except for the last sentence beginning “the initial public notice” through the end of the paragraph. This is ACD material which is advisory in nature.
26	E-mail from Rose to SPA_Waiver_NewYork_R02@ams.hhs.gov Smith, Alberino, Leeds and Reed dated 07/26/10 with attachments	In the body of the e-mail, redact the second sentence in the first paragraph and the second paragraph as ACD material which is advisory in nature. Disclose the remainder of the e-mail. Unapproved Addendums to Attachment 3.1-A and 3.1-B, as well as unapproved Attachment 4.19-B constitute ACD material lawfully denied by the Custodian.
27	E-mail from Rose to SPA_Waiver_NewYork_R02@ams.hhs.gov Smith, Alberino, Kelly, Leeds, Reed and Howell dated 07/27/10	Redact the first and second paragraphs in the body of the e-mail as ACD material. Disclose the remainder of the e-mail. Unapproved Addendums to Attachment 3.1-A and 3.1-B, as well as unapproved Attachment 4.19-B constitute ACD material lawfully denied by the Custodian.

28	E-mail from Stokley to Leeds dated 08/24/10	Redact the first, second and third paragraphs in the body of the e-mail as ACD material. The attached State Plan Amendment submitted as a revision is not finalized and therefore ACD material lawfully denied by the Custodian.
29a	E-mail from Rose to Azoia, Keevey, Popkin, Murphy and Vaccaro dated 06/23/11	The referenced e-mail is not ACD material and shall be disclosed. The unapproved Addendums to Attachment 3.1-A and 3.1-B, unapproved Attachment 4.19-B and the two (2) unapproved transmittals (Forms CMS-179) with a proposed date of July 1, 2009 and September 26, 2009 constitute ACD material lawfully denied by the Custodian.
29b	E-mail from Rose to SPA_Waiver_NewYork_R02@cms.hhs.gov	The referenced e-mail is not ACD material and shall be disclosed. The unapproved Addendums to Attachment 3.1-A and 3.1-B, unapproved Attachment 4.19-B and the two (2) unapproved transmittals (Forms CMS-179) with a proposed date of July 1, 2009 and September 26, 2009 constitute ACD material lawfully denied by the Custodian.
30a	E-mail from Popkin to Balbuena dated 08/17/11 with attachment	Redact numbered paragraphs 1 through 4 as ACD material. The attached NJ-11-03 MA 9 (seeking advice/information), the unapproved Addendum to Attachment 3.1-A, unapproved Attachment 4.19-B and unapproved transmittal (Form CMS-179) constitute ACD material lawfully denied by the Custodian.

30b	E-mail from Balbuena to Rose dated 08/10/11	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attached NJ-11-03 MA 9 (seeking advice/information), the unapproved Addendum to Attachment 3.1-A, unapproved Attachment 4.19-B and unapproved transmittal (Form CMS-179) constitute ACD material lawfully denied by the Custodian.
30c	E-mail from Rose to Balbuena dated 08/10/11	Redact the first sentence in first paragraph of the body of the e-mail as ACD material. If attached, the attached NJ-11-03 MA 9 (seeking advice/information), the unapproved Addendum to Attachment 3.1-A, unapproved Attachment 4.19-B and unapproved transmittal (Form CMS-179) constitute ACD material lawfully denied by the Custodian.
30d	E-mail from Balbuena to Rose dated 08/04/11	Redact the first and second sentences in the first paragraph of the body of the e-mail as ACD material. If attached, the attached NJ-11-03 MA 9 (seeking advice/information), the unapproved Addendum to Attachment 3.1-A, unapproved Attachment 4.19-B and unapproved transmittal (Form CMS-179) constitute ACD material lawfully denied by the Custodian.
31a	E-mail from Popkin to Hubbs dated 09/16/11 with attachment	Redact content in the body of the e-mail as ACD material. The attached letter dated September 16, 2011, seeks advice/information and is ACD material lawfully denied by the Custodian.

31b	E-mail from Balbuena to Rose dated 09/16/11	The referenced e-mail is not ACD material and shall be disclosed. If attached, the attached letter dated September 16, 2011, seeks advice/information and is ACD material lawfully denied by the Custodian.
32	E-mail from Hubbs to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 11/22/11 with attachments	The referenced e-mail is not ACD material and shall be disclosed. The letter dated November 14, 2011 contains advice and recommendations, and is ACD material lawfully denied by the Custodian. The unapproved Addendum to Attachment 3.1-A and the unapproved Attachment 4.19-B also constitute ACD material lawfully denied by the Custodian.
33a	E-mail from Balbuena to Hubbs dated 12/27/11	Redact the subject line because the material is advisory in nature; therefore ACD.
33b	E-mail from Hubbs to Balbuena dated 12/23/11	Redact the subject line and the first paragraph in the body of the e-mail because the material is advisory in nature; therefore ACD.
34a	E-mail from Hubbs to Balbuena dated 12/27/11	Redact the subject line and the first sentence in the body of the e-mail as ACD material. The unapproved Addendum to Attachment 3.1-A and the unapproved Attachment 4.19-B, as well as the Draft RAI Response constitute ACD material lawfully denied by the Custodian.
34b	E-mail from Balbuena to Hubbs dated 12/27/11	See 33a above.
34c	E-mail from Hubbs to Balbuena dated 12/23/11	See 33b above.
35a	E-mail from Balbuena to Hubbs dated 12/28/11	Redact the subject line because the material is advisory in

		nature; therefore ACD. Also, redact the second sentence as ACD material.
35b		See 34a above.
35c		See 34b above.
35d		See 34c above.
36	E-mail from Balbuena to Hubbs dated 01/03/12	Redact the second and third sentences in the body of the e-mail as ACD material because the material is advisory in nature.
36b	E-mail from Hubbs to Balbuena dated 12/30/11	Redact the first and second sentences in the body of the e-mail as ACD material because the material is advisory in nature.
37	E-mail from Hubbs to Balbuena dated 03/14/12.	Redact the second sentence in the body of the e-mail as ACD material because the material is advisory in nature.
38	E-mail from Hubbs to SPA_Waiver_NewYork_R02@cms.hhs.gov dated 04/02/12	Redact the first and second sentences in the body of the e-mail as ACD material. The attached letter dated March 30, 2012 (seeking advice/information), unapproved Addendum to Attachment 3.1-A, unapproved Attachment 4.19-B, and unapproved transmittal (Form CMS-179) constitute ACD material lawfully denied by the Custodian.
39	E-mail from McLaughlin to Balbuena dated 04/09/12	Redact the second and third sentences in the body of the e-mail as advisory ACD material. The unapproved Addendums to Attachment 3.1-A and 3.1-B and the unapproved Attachment 4.19-B constitute ACD material lawfully denied by the Custodian.

40	E-mail from Hubbs to Lind and Gernhardt dated 04/09/13	In the first paragraph, redact the first and second sentences; in the second paragraph, redact the first and second sentences as advisory ACD material. Delete the March 20, 2013 letter as deliberative material. Disclose the approved Attachment 4.19-B one page document which was approved on March 20, 2013.
41	E-mail from Hubbs to Montalto dated 04/09/13	Redact the second paragraph as ACD advisory material, and the third paragraph as ACD deliberative material.
42a	E-mail from Montalto to Hubbs dated 04/10/13	Redact the first three sentences as ACD advisory material.
42b	E-mail from Hubbs to Montalto dated 04/09/13	See 41 above.
43	E-mail from Hubbs to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 06/04/13 with attachments	The referenced e-mail is not ACD material and shall be disclosed together with its approved attachment. If the June 4, 2013 letter is also an attachment, it (as deliberative material) and the unapproved Attachment 4.19-B constitute ACD material lawfully denied by the Custodian.
44	E-mail from Montalto to Hubbs dated 07/26/13	Redact the first sentence as ACD advisory material. The attachment contains deliberative material and constitutes ACD material lawfully denied by the Custodian.
45a	E-mail from Hubbs to Montalto dated 08/12/13	Redact the first three sentences as ACD advisory material. The attachment contains deliberative material and constitutes ACD material lawfully denied by the Custodian.
45b	E-mail from Montalto to Hubbs dated 07/26/13	See 44 above.

46a	E-mail from Hubbs to Montalto dated 08/23/13	Redact the first and second paragraphs as ACD material. The attachment contains deliberative material and constitutes ACD material lawfully denied by the Custodian. However, the attached 4.19-B was approved on November 21, 2012 and shall be disclosed.
46b	E-mail from Montalto to Hubbs dated 07/26/13	See 45b above.
47	E-mail from Montalto to Hubbs dated 08/29/13	The referenced e-mail is not ACD material and shall be disclosed. The attached letter dated August 29, 2013 was lawfully denied by the Custodian.
48	E-mail from Hubbs to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/17/13	The referenced e-mail is not ACD material and shall be disclosed. The September 17, 2013 letter seeks additional information and is advisory in nature. However, the attached 4.19-B was approved on 11/21/12 and is subject to disclosure.
49	E-mail from Hubbs to Montalto dated 11/12/13 with attachments	Redact the first paragraph in the subject e-mail as advisory ACD material. Attachment is pending approval therefore is ACD material and was lawfully denied as such by the Custodian. The remainder of the attachments are not ACD material and shall be disclosed.
50	CMS letter from Kelly to Kohler dated 03/10/06 with attachments	The referenced letter is not ACD material and shall be disclosed along with its attachments, except the attached December 22, 2005 letter and unapproved 3.1A.1, 3.1B.1, unapproved transmittal (Form CMS-179), SPA 05-17 (seeking advice/information) and unapproved Addendum to

		Attachment 3.1.B which constitute ACD material lawfully denied by the Custodian.
51	CMS letter from Kelly to Kohler dated 02/01/06 with attachments	The referenced letter is not ACD material and shall be disclosed along with its attachments, except the unapproved 3.1B document and unapproved transmittal (Form CMS-179) which constitute ACD material lawfully denied by the Custodian.

Therefore, on the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s findings of the *in camera* examination set forth in the above table.

Knowing & Willful

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council’s January 31, 2019 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance to the Council, together with a document index and nine (9) copies of the unredacted records ordered by the Council for the *in camera* examination.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.⁶**
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.

⁶ 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.
Rick Robinson v. New Jersey Department of Human Services, Division of Medical Assistance and Health Services, 2015-410 – *In Camera* Findings and Recommendations of the Executive Director 25

Prepared By: John E. Stewart

January 24, 2023



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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

January 31, 2019 Government Records Council Meeting

Rick Robinson
Complainant

Complaint No. 2015-410

v.

NJ Department of Human Services,
Division of Medical Assistance and Health Services
Custodian of Record

At the January 31, 2019 public meeting, the Government Records Council ("Council") considered the January 22, 2019 Findings and Recommendations of the Council Staff 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. Because the Complainant paid the Custodian \$793.16 in requested special service charges, and the Custodian subsequently provided the Complainant with approximately 250 pages of responsive records in return for said payment on March 7, 2016, the issue of whether special service charges were appropriate in this matter is moot.
2. Pursuant to Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the records relevant to this complaint which are listed in Table 2 above, to determine the validity of the Custodian's assertion that they were lawfully denied in whole or in part because said records contain advisory, consultative or deliberative material exempt from access pursuant to N.J.S.A. 47:1A-1.1.
3. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see paragraph 2 above), a document or redaction index², as well as a legal certification from the Custodian, in accordance with N.J. Court Rule R. 1:4-4,³ 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.**

¹ 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.

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

³ "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."



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

Interim Order Rendered by the
Government Records Council
On The 31st Day of January, 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: February 4, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
January 31, 2019 Council Meeting**

**Rick Robinson¹
Complainant**

GRC Complaint No. 2015-410

v.

**New Jersey Department of Human Services,
Division of Medical Assistance and Health Services²
Custodial Agency**

Records Relevant to Complaint: “Any communications between CMS and the New Jersey Department of Human Services regarding Medicaid State Plan Amendments to State Plan Attachment 4.19-B, Reimbursement for Pharmacy Services, or any other part of the State Plan addressing pharmacy reimbursement.”³

Custodian of Record: Dianna Rosenheim

Request Received by Custodian: December 9, 2015

Responses Made by Custodian: December 9, 17, and 21, 2015

GRC Complaint Received: December 23, 2015

Background⁴

Request and Responses:

On December 9, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On that same date, the Custodian responded in writing, providing a link to the State Plan and directing the Complainant to the proper section of the State Plan in response to part of his request. The Custodian informed the Complainant that the agency would further respond to the request in the “near future.” Thereafter, on December 17, 2015, which was the sixth (6th) business day following receipt of the request, the Custodian sought an extension of time until December 30, 2015.

On December 21, 2015, the Custodian responded in writing to each of the request items within the OPRA request. For request item number 5, which is the only request item relevant to this complaint, the Custodian stated that she denied the request because, “[i]t will cost in excess

¹ No legal representation listed on record.

² No legal representation listed on record.

³ This is request item number 5. There were other records requested that are not relevant to this complaint.

⁴ 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.

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of \$350 to review our records for documents sought this section (sic) of your request. As such, your request . . . is denied based on the maximum cost authorized by you.” The Custodian also denied the Complainant’s request item as advisory, consultative or deliberative (“ACD”) material, stating, “. . . the materials requested in item #5 were essential to the agencies’ deliberations and are reflective of the agencies’ deliberations. Therefore the records are exempt from release under OPRA.”

Denial of Access Complaint:

On December 23, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that on December 9, 2015, he requested the records relevant to this complaint, and on December 21, 2015, the Custodian denied the request because responding to the request would cost more than \$350.00, which was the maximum amount the Complainant authorized in order to fulfill the request. The Complainant stated that he appealed the denial based upon the cost because the Custodian never provided him with any specifics concerning calculation of the cost. Moreover, the Complainant stated that he would have been willing to augment the maximum cost.

The Complainant stated that the Custodian also denied the request because the requested records consisted of ACD material. However, the Complainant stated that the Custodian’s response did not provide any explanation of the types of records or communications with CMS that were in the Custodian’s possession. The Complainant also asserted that the request would include transmittals, and it is unlikely such transmittals would contain ACD material. As such, the Complainant took issue with the Custodian’s denial of all requested records because they constitute ACD material.

Statement of Information:

On January 29, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s request on December 9, 2015, and on that same date responded by providing a link to the State Plan. The Custodian further certified that on December 17, 2015, she sought an extension of time until December 30, 2015. The Custodian certified that on December 21, 2015, she fully responded to the request.

The Custodian certified that the cost to fulfill the request would exceed the \$350.00 maximum amount authorized by the Complainant. The Custodian stated that the cost for the staff to search for responsive records has already exceeded \$768.00. The Custodian further certified that the requested e-mail and correspondence exchanges between the agency and the Center for Medicare and Medicaid Services were made before the final state plan amendment was agreed-upon. As such, the Custodian certified that the records are exempt from access under N.J.S.A. 47:1A-1.1 because they are pre-decisional and constitute ACD material. The Custodian cited Educ. Law Ctr. v. N.J. Dep’t of Educ., 198 N.J. 274 (2009), as holding that a record is entitled to deliberative-process protection if it was used in the decision-making process and its disclosure would expose deliberative aspects of the process. The Custodian further stated that, if these records were disclosed, the disclosure would have a chilling effect on the ability of the federal and state governments to communicate and negotiate in the process of administering the Medicaid program.

The Custodian in the document index (item #9 of the SOI), listed 89 e-mails and letters responsive to the request. Fifty-one (51) records were denied in whole or in part because the Custodian certified that the records contained ACD material pursuant to N.J.S.A. 47:1A-1.1. Thirty-eight (38) of the records were determined by the Custodian to be subject to disclosure. The Custodian certified that the records that were partially disclosable, as well as the records that were fully disclosable, would be disclosed to the Complainant upon payment of the special service charge. The Custodian certified that all final approved State Plan Amendments were provided to the Complainant.

Additional Submissions:

On December 4, 2018, the GRC forwarded to the Custodian a Special Service Charge Questionnaire. The GRC asked the Custodian to complete and return the questionnaire. The GRC also asked the Custodian whether the document index (item #9 of the SOI), which listed 89 e-mails and letters, was responsive to request item number 5.

On December 7, 2018, the Custodian provided the responses set forth in Table 1 to the GRC’s Special Service Charge Questionnaire. The Custodian certified that, “. . . since the fee was paid and all records were retrieved, redacted, copied and produced shortly after the complaint was filed with the GRC in this matter, all fees, personnel levels, hourly rates, and staffing levels [reflected in the questionnaire answers] are based on the actual information available and or used to compile this data in 2015.

TABLE 1

Questions	Custodian’s Responses
1. What records are requested?	Any communications between CMS and the New Jersey Department of Human Services regarding Medicaid State Plan Amendments to State Plan Attachment 4.19-B, Reimbursement for Pharmacy Services, or any other part of the State Plan addressing pharmacy reimbursement. Requestor subsequently paid the \$793.16 special service charge and was provided with the records on March 7, 2016. See the records at Exhibit B. ⁵
2. Give a general nature description and number of the government records requested.	This information was specified in detail, including the number of pages for each responsive record, in the Document Index attached as #9 to the SOI. That index is attached here for reference as Exhibit A.
3. What is the period of time over which the records extend?	From 2006 to 2013.

⁵ Exhibit B, which the Custodian attached to the Special Service Charge Questionnaire contains approximately 250 pages of correspondence and other documents.
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4. Are some or all of the records sought archived or in storage?	No
5. What is the size of the agency (total number of employees)?	DMAHS has approximately 500 employees.
6. What is the number of employees available to accommodate the records request?	Three different employees worked on this request, however each are or were full time employees with their own regularly assigned duties. They were charged with retrieving and/or redacting these documents to accommodate the requirements of the OPRA request, but the work was accomplished in between and in addition to their regular duties.
7. To what extent do the requested records have to be redacted?	Each of the approximately 570 pages of documents had to be inspected line-by-line to determine what if any confidential materials needed to be redacted. The records reflect negotiations between the State and federal governments on the Medicaid state plan. The final outcome of these negotiations are in the State Plan amendments that are available to the public at: https://www.state.nj.us/humanservices/dmahs/info/state-plan.html . Approximately 400 pages of materials contain in-line redactions or were withheld as specified in the Document Index attached as #9 to the SOI.
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?	Regulatory Officer 4 – Ms. Hubbs and Ms. McLaughlin were the authors and/or recipients of the correspondence and documents being requested, and, therefore, were requested to search their files and produce those documents and or transmissions responsive to the OPRA request. Principal Clerk Typist – Ms. Sweeney was administrative personnel charged with assisting in gathering and copying and/or scanning documents for production to the requestor. See also answer to #12 below.
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?	See answer to #8 above.
10. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to return records	See answer to #8 above.

to their original storage place?	
11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?	The individuals identified in #8 and #12 are or were employees of DMAHS with direct knowledge of and or access to the requested records.
12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?	Julie Hubbs (Regulatory Officer 4; Hourly rate = \$45.20) Zoe McLaughlin (Regulatory Officer 4; Hourly rate = \$45.20) Stacey Sweeney (Principal Clerk Typist; Hourly rate = \$25.56)
13. What is the availability of information technology and copying capabilities?	DMAHS staff has photocopiers and computers on premises to utilize, however, these resources are shared by the entire office.
14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents.	Julie Hubbs = 7.0 hours for gathering and review of documents Zoe McLaughlin = 1.5 hours for gathering and review of documents Stacey Sweeney = 16.0 hours assisting in gathering and then copying and/or scanning documents

The Custodian also responded to the GRC's inquiry concerning whether item #9 of the SOI was responsive to request item number 5. The Custodian stated that item #9 was responsive to request item number 5, and she directed the GRC's attention to Exhibit B which contains copies of non-confidential records that were disclosed to the Complainant on March 7, 2016 following his payment of the special service charge.

On December 7, 2018, the GRC telephoned the Complainant. The GRC asked the Complainant to confirm that he received the records responsive to his request as set forth by the Custodian in the Special Service Charge Questionnaire. The GRC also asked the Complainant if he was satisfied that the document index, item #9 of the SOI, adequately identified the types of records or communications between the agency and CMS that are in the agency's possession, as well as the legal explanation for denial of purported ACD material.

The Complainant said that he was still in the process of reviewing the Custodian's responses in the Special Service Charge Questionnaire, but that he or his staff member, Meghan, would get back to the GRC with an answer no later than December 10, 2018.

On December 11, 2018, the Complainant telephoned the GRC. The Complainant stated that the requested special service charge was paid and the Custodian thereafter disclosed some of

the records. The Complainant stated that the special service charge is no longer an issue. However, the Complainant stated that, with respect to the records that were denied as ACD material, he does not believe that the assertion of the ACD privilege applies to many of the records for which it has been claimed. The Complainant stated that the cover e-mails that were previously disclosed represent back and forth communications between the State Medicaid agency and the federal government regarding the State's request for various State Plan Amendments and the federal government's responses, as well as additional questions posed to the State agency. The Complainant asserted that many of the denied records should have therefore been disclosed.

Analysis

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.

Special Service Charge

The first issue in this complaint concerns a special service charge. The Custodian stated that the cost for the agency's staff to produce records responsive to the request would exceed the \$350.00 maximum amount authorized by the Complainant. For this reason, the Custodian denied the request. The Complainant stated that the Custodian failed to provide sufficient specificity to justify her assessment of a charge in excess of \$350.00. Moreover, the Complainant stated that he was willing to augment the maximum authorized amount.

Because the Custodian asserted that a special service charge pursuant to N.J.S.A. 47:1A-5(c) would be necessary, the GRC asked the Custodian to complete a Special Service Charge Questionnaire with certified responses, so that the GRC could determine if an extraordinary expenditure of time and effort would be justified in order to accommodate the request. When the Custodian returned the completed Special Service Charge Questionnaire to the GRC, her answer to the first question was that the "requestor subsequently paid the \$793.16 special service charge and was provided with the records on March 7, 2016." The evidence of record reveals that the Custodian disclosed approximately 250 pages of responsive correspondence and other documents to the Complainant in return for payment of the special service charge amount.⁶

Therefore, because the Complainant paid the Custodian \$793.16 in requested special service charges, and the Custodian subsequently provided the Complainant with approximately 250 pages of responsive records in return for said payment on March 7, 2016, the issue of whether special service charges were appropriate in this matter is moot.

⁶ The GRC was neither copied on this transaction, nor otherwise informed by the parties that a special service charge was paid and records were disclosed.

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Records Withheld as ACD material

Of the eighty-nine (89) records responsive to request item number 5, fifty-one (51) were denied in whole or in part as ACD material pursuant to N.J.S.A. 47:1A-1.1. A description of the denied records or parts thereof is contained in Table 2.

TABLE 2

Item No.	Record Responsive to the Request	Description of Denial	Legal Reason
1	E-mail from McLaughlin to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/30/11 (14 pages)	SPA 11-14 Reimbursement for Pharmaceutical Services	ACD material pursuant to <u>N.J.S.A.</u> 47:1A-1.1
2	E-mail from Balbuena to McLaughlin, Popkin, Rose & Sweeney dated 12/12/11 (5 pages)	NJ SPA 11-14	Same as Item 1
3	E-mail from McLaughlin to Balbuena dated 03/02/12 (2 pages)	RE: Thank you	Same as Item 1
4	E-mail from Balbuena to McLaughlin dated 06/13/12 (7 pages)	RE: SPA 11-14	Same as Item 1
5	E-mail from McLaughlin to Balbuena dated 07/16/12 (15 pages)	RE: SPA 11-14	Same as Item 1
6	E-mail from Balbuena to McLaughlin dated 07/16/12 (3 pages)	RE: SPA 11-14	Same as Item 1
7	E-mail from McLaughlin to Balbuena dated 07/31/12 (4 pages)	RE: SPA 11-14	Same as Item 1
8	E-mail from Balbuena to McLaughlin dated 08/15/12 (3 pages)	RE: SPA 11-14	Same as Item 1
9	E-mail from Balbuena to McLaughlin dated 08/22/12 (3 pages)	RE: SPA 11-14	Same as Item 1
10	E-mail from McLaughlin to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/30/11 (14 pages)	NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1
11	E-mail from Salce to McLaughlin dated 10/18/12 (5 pages)	RE: NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1
12	E-mail from McLaughlin to Balbuena dated 10/15/12 (4 pages)	RE: NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1
13	E-mail from Salce to McLaughlin dated 10/2/12 (2 pages)	RE: NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1
14	E-mail from Salce to McLaughlin dated 10/18/12 (5 pages)	RE: NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1

15	E-mail from McLaughlin to Salce, Balbuena and Simananda dated 10/24/12 (13 pages)	RE: NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1
16	E-mail from Balbuena to McLaughlin dated 10/24/12 (13 pages)	RE: NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1
17	E-mail from McLaughlin to Salce, Balbuena and Simananda dated 10/24/12 (2 pages)	SPA 11-14 responses to additional questions	Same as Item 1
18	E-mail from Balbuena to McLaughlin dated 10/24/12 (6 pages)	RE: NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1
19	E-mail from Salce to McLaughlin dated 10/24/12 (5 pages)	RE: NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1
20	E-mail from McLaughlin to Salce and Simananda dated 11/30/12 (10 pages)	RE: NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1
21	E-mail from McLaughlin to Salce and Simananda dated 11/30/12 (10 pages)	RE: NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1
22	E-mail from Salce to McLaughlin and Simananda dated 02/12/13 (16 pages)	RE: NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1
23	E-mail from Salce to McLaughlin dated 02/12/13 (8 pages)	RE: NJ SPA 11-14 Pharmaceutical Reimbursement	Same as Item 1
24	E-mail from Stokley to Popkin dated 12/23/09 (8 pages)	FW: SPA 09-05 Pharmacy CMS formal questions	Same as Item 1
25	E-mail from Stokley to Harr, Keevey, Popkin, Springer and Azoia dated 05/05/10 (35 pages)	FW: NJ State Plan Amendment 09-05 Reply to RAI	Same as Item 1
26	E-mail from Rose to SPA_Waiver_NewYork_R02@ams.hhs.gov Smith, Alberino, Leeds and Reed dated 07/26/10 (21 pages)	SPA 09-05 MA (NJ) Pharmaceutical Services	Same as Item 1
27	E-mail from Rose to SPA_Waiver_NewYork_R02@ams.hhs.gov Smith, Alberino, Kelly, Leeds, Reed and Howell dated 07/27/10 (13 pages)	SPA 09-05 MA (NJ) Withdrawal of RAI response	Same as Item 1
28	E-mail from Stokley to Leeds dated 08/24/10 (25 pages)	SPA 09-05 revised documents (renumbered as 09-	Same as Item 1

		05A and 09-05B and minor edits)	
29	E-mail from Rose to Azoia, Keevey, Popkin, Murphy and Vaccaro dated 06/23/11 (10 pages)	FW: SPA 11-03-MA (NJ) SUL for multi-source drugs	Same as Item 1
30	E-mail from Popkin to Balbuena dated 08/17/11 (17 pages)	RE: NJ SPA 11-03	Same as Item 1
31	E-mail from Popkin to Hubbs dated 09/16/11 (3 pages)	RE: NJ SPA 11-03 RAI	Same as Item 1
32	E-mail from Hubbs to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 11/22/11 (18 pages)	RE: SPA 11-03 MA RAI responses	Same as Item 1
33	E-mail from Balbuena to Hubbs dated 12/27/11 (1 page)	RE: SPA 11-03 convert to draft letter	Same as Item 1
34	E-mail from Hubbs to Balbuena dated 12/27/11 (10 pages)	RE: SPA 11-03 convert to draft letter	Same as Item 1
35	E-mail from Balbuena to Hubbs dated 12/28/11 (2 pages)	RE: SPA 11-03 convert to draft letter	Same as Item 1
36	E-mail from Balbuena to Hubbs dated 01/03/12 (1 page)	RE: 08-07 targeted case management	Same as Item 1
37	E-mail from Hubbs to Balbuena dated 03/14/12 (4 pages)	11-03	Same as Item 1
38	E-mail from Hubbs to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 04/02/12 (18 pages)	Revised NJ SPA 11-03 RAI	Same as Item 1
39	E-mail from McLaughlin to Balbuena dated 04/09/12 (14 pages)	SPA 11-03	Same as Item 1
40	E-mail from Hubbs to Lind and Gernhardt dated 04/09/13 (4 pages)	Amendment to physician services state plan page	Same as Item 1
41	E-mail from Hubbs to Montalto dated 04/09/13 (1 page)	Companion letter to SPA 12-09 to amend phy svcs page	Same as Item 1
42	E-mail from Montalto to Hubbs dated 04/10/13 (2 pages)	Companion letter to SPA 12-09 to amend phy svcs page	Same as Item 1
43	E-mail from Hubbs to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 06/04/13 (5 pages)	SPA 13-04 MA (NJ)	Same as Item 1
44	E-mail from Montalto to Hubbs dated 07/26/13 (2 pages)	SPA NJ-13-04	Same as Item 1

45	E-mail from Hubbs to Montalto dated 08/12/13 (6 pages)	RE: SPA NJ-13-04	Same as Item 1
46	E-mail from Hubbs to Montalto dated 08/23/13 (10 pages)	RE: SPA NJ-13-04	Same as Item 1
47	E-mail from Montalto to Hubbs dated 08/29/13 (3 pages)	SPA NJ-13-04 RAI	Same as Item 1
48	E-mail from Hubbs to SPA_Waiver_NewYork_R02@ams.hhs.gov dated 09/17/13 (16 pages)	NJ response to RAI for SPA 13-04	Same as Item 1
49	E-mail from Hubbs to Montalto dated 11/12/13 (10 pages)	SPA 13-04	Same as Item 1
50	CMS letter from Kelly to Kohler dated 03/10/06 (28 pages)	SPA 05-17	Same as Item 1
51	CMS letter from Kelly to Kohler dated 02/01/06 (12 pages)	SPA 05-18	Same as Item 1

The Complainant disputed the Custodian’s assertion that all of the denied records contain ACD material.

In Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council⁷ dismissing the complaint by accepting the custodian’s legal conclusion for the denial of access without further review. The Court stated that “OPRA contemplates the GRC’s meaningful review of the basis for an agency’s decision to withhold government records . . . When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers.” Id. The Court also stated that:

The statute also contemplates the GRC’s *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the ‘Open Public Meetings Act,’ N.J.S.A. 10:4-6 to -21, it also provides that the GRC ‘may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.’ N.J.S.A. 47:1A-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

[Id. at 355.]

Further, the Court stated that:

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal . . . There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC’s obligation to

⁷ Paff v. NJ Dep’t of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).
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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.]

Therefore, pursuant to Paff, 379 N.J. Super. at 346, the GRC must conduct an *in camera* review of the records relevant to this complaint which are listed in Table 2 above, to determine the validity of the Custodian's assertion that they were lawfully denied in whole or in part because said records contain ACD material exempt from access pursuant to N.J.S.A. 47:1A-1.1.

Knowing & Willful

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

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. Because the Complainant paid the Custodian \$793.16 in requested special service charges, and the Custodian subsequently provided the Complainant with approximately 250 pages of responsive records in return for said payment on March 7, 2016, the issue of whether special service charges were appropriate in this matter is moot.
2. Pursuant to Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the records relevant to this complaint which are listed in Table 2 above, to determine the validity of the Custodian's assertion that they were lawfully denied in whole or in part because said records contain advisory, consultative or deliberative material exempt from access pursuant to N.J.S.A. 47:1A-1.1.
3. **The Custodian must deliver⁸ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see paragraph 2 above), a document or redaction index⁹, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule R. 1:4-4,¹⁰ 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.**

⁸ 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.

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

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

Prepared By: John E. Stewart

January 22, 2019