



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

February 26, 2020 Government Records Council Meeting

Jesse Wolosky
Complainant

Complaint No. 2017-61

v.

Township of Jefferson (Morris)
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the January 21, 2020 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant’s Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

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 26th Day of February 2020

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: March 3, 2020



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
February 26, 2020 Council Meeting**

**Jesse Wolosky¹
Complainant**

GRC Complaint No. 2017-61

v.

**Township of Jefferson (Morris)²
Custodial Agency**

Records Relevant to Complaint: Electronic copy of: “The actual existing official 2016 year end earnings report/payroll record or the year end pay stub with all deductions, actual net income and gross income earned for each employee working and getting paid by the [Township of Jefferson (“Township”)].

Custodian of Record: Michele Reilly

Request Received by Custodian: January 4, 2017

Response Made by Custodian: January 12, 2017; January 20, 2017; January 30, 2017

GRC Complaint Received: March 23, 2017

Background

November 12, 2019 Council Meeting:

At its November 12, 2019 public meeting, the Council considered the October 20, 2019 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, found that:

1. The Custodian complied with the Council’s September 24, 2019 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian improperly imposed a special service charge to fulfill the request. However, the Custodian complied with the Council’s September 24, 2019 Interim Order by providing the responsive records to the Complainant. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore,

¹ Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

² Represented by Jonathan N. Frodella, Esq., of Laddey, Clark & Ryan, LLP (Sparta, NJ). Previously represented by Lawrence P. Cohen, Esq., of Lavery, Selvaggi, Abromitis & Cohen, P.C. (Hackettstown, NJ).

the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

3. Pursuant to the Council's September 24, 2019 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Council required the Custodian to disclose the responsive record without imposing a special service charge, which the Custodian complied with on October 2, 2019. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 71. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Procedural History:

On November 14, 2019, the Council distributed its Interim Order to all parties. On December 10, 2019, Custodian's Counsel sent an e-mail to the Government Records Council ("GRC"), stating that the parties have reached an agreement on a fee payment pending approval from the Township Council. Custodian's Counsel also stated that a resolution approving the payment was scheduled for the next Township Council meeting, December 18, 2019. Custodian's Counsel then requested an extension of time to respond to until December 19, 2019, which the GRC granted.

On December 19, 2019, the Custodian's Counsel responded to the Council's Interim Order, stating that the Township Council approved the settlement between the parties and authorized payment to Complainant's Counsel. On December 20, 2019, Complainant's Counsel confirmed with the GRC that the matter has been resolved.

Analysis

Prevailing Party Attorney's Fees

At its November 12, 2019 meeting, the Council determined that the Complainant was a prevailing party entitled to an award of reasonable attorney's fees. The Council thus ordered that the "parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days." The Council further ordered that the parties notify of any settlement prior to the expiration of the twenty (20) business day time frame. Finally, the Council ordered that, should the parties not reach an agreement, the Complainant's Counsel

would be required to “submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.”

On November 14, 2019, the Council distributed its Interim Order to all parties. The parties had until close of business on December 13, 2019 to inform the Council as to whether they reached a settlement. On December 10, 2019, Custodian’s Counsel informed the GRC that a fee arrangement had been agreed to by the parties but requested an extension of time to until December 19, 2019 to confirm the release of payment. The GRC granted the extension request to until the requested date. On December 19, 2019, Custodian’s Counsel notified the GRC that the Township Council had formally approved the fee agreement. On December 20, 2019, Complainant’s Counsel notified the GRC to confirm that the matter had been resolved.

Accordingly, the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant’s Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant’s Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Prepared By: Samuel A. Rosado
Staff Attorney

January 21, 2020³

³ This complaint was prepared for adjudication at the Council’s January 28, 2020 meeting, but could not be adjudicated due to a lack of quorum.



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PO Box 819
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PHILIP D. MURPHY
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LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

November 12, 2019 Government Records Council Meeting

Jesse Wolosky
Complainant

Complaint No. 2017-61

v.

Township of Jefferson (Morris)
Custodian of Record

At the November 12, 2019 public meeting, the Government Records Council (“Council”) considered the October 30, 2019 Supplemental 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. The Custodian complied with the Council’s September 24, 2019 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian improperly imposed a special service charge to fulfill the request. However, the Custodian complied with the Council’s September 24, 2019 Interim Order by providing the responsive records to the Complainant. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. Pursuant to the Council’s September 24, 2019 Interim Order, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Council required the Custodian to disclose the responsive record without imposing a special service charge, which the Custodian complied with on October 2, 2019. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 71. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney’s fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**



Interim Order Rendered by the
Government Records Council
On The 12th Day of November 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: November 14, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
November 12, 2019 Council Meeting**

**Jesse Wolosky¹
Complainant**

GRC Complaint No. 2017-61

v.

**Township of Jefferson (Morris)²
Custodial Agency**

Records Relevant to Complaint: Electronic copy of: “The actual existing official 2016 year end earnings report/payroll record or the year end pay stub with all deductions, actual net income and gross income earned for each employee working and getting paid by the [Township of Jefferson (“Township”)].

Custodian of Record: Michele Reilly

Request Received by Custodian: January 4, 2017

Response Made by Custodian: January 12, 2017; January 20, 2017; January 30, 2017

GRC Complaint Received: March 23, 2017

Background

September 24, 2019 Council Meeting:

At its September 24, 2019 public meeting, the Council considered the September 17, 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, found that:

1. The Custodian has not proved that a special service charge was warranted or reasonable here. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that 4 hours represented an “extraordinary amount of time and effort” to redact confidential information from the payroll register. See N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191, 199, 204 (Law Div. 2002). Thus, the Custodian shall disclose the responsive records without the imposition of a special service charge.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

¹ Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

² Represented by Jonathan N. Frodella, Esq., of Laddey, Clark & Ryan, LLP (Sparta, NJ). Previously represented by Lawrence P. Cohen, Esq., of Lavery, Selvaggi, Abromitis & Cohen, P.C. (Hackettstown, NJ).

redaction, if applicable. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵

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

Procedural History:

On September 26, 2019, the Council distributed its Interim Order to all parties. On October 2, 2019, the Custodian responded to the Council's Interim Order. The Custodian certified that 410 pages of responsive records were delivered to the Complainant that same day. The Custodian also certified that she provided a document index which stated the lawful basis for the redactions contained within the records. Lastly, the Custodian provided a certified confirmation of compliance to the Executive Director.

Analysis

Compliance

At its September 24, 2019 meeting, the Council ordered the Custodian to provide the Complainant with the responsive records without the imposition of a special service charge. Further, the Council ordered the Custodian to provide a redaction index and submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On September 26, 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. Thus, the Custodian's response was due by close of business on October 3, 2019.

On October 2, 2019, the fourth (4th) business day after receipt of the Council's Order, the Custodian provided a certification to the GRC. The Custodian certified that she delivered 410 pages of responsive records to the Complainant that same day via e-mail. The Custodian also certified that she provided the Complainant with a redaction index describing the redactions made to the records and their justification. The Custodian also provided certified confirmation of compliance to the GRC. Thus, the Custodian complied with the Council's Order.

³ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁴ "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."

⁵ 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.

Therefore, the Custodian complied with the Council's September 24, 2019 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

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 (Law Div. 1993)); 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)).

The Custodian improperly imposed a special service charge to fulfill the request. However, the Custodian complied with the Council's September 24, 2019 Interim Order by providing the responsive records to the Complainant. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prevailing Party Attorney's Fees

OPRA provides that:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . .; or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council . .

. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

[N.J.S.A. 47:1A-6.]

In Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006), the Court held that a complainant is a “prevailing party” if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct. Additionally, the Court held that attorney’s fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Supreme Court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct.” (quoting Buckhannon Bd. & Care Home v. West Virginia Dep’t of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court stated that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” (quoting Black’s Law Dictionary 1145 (7th ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties . . .” Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863. Further, the Supreme Court expressed concern that the catalyst theory would spawn extra litigation over attorney's fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

However, the Court noted in Mason, that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, (citing Teeters, 387 N.J. Super. at 429). See also Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). “But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” 196 N.J. at 73 (citations omitted).

The Mason Court accepted the application of the catalyst theory within the context of OPRA, stating that:

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6. Under the prior RTKL, “[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney's fee not to exceed \$500.00.” N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

[Mason at 73-76 (2008).]

The Court in Mason, further held that:

[R]equestors are entitled to attorney’s fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) “a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved”; and (2) “that the relief ultimately secured by plaintiffs had a basis in law.” Singer v. State, 95 N.J. 487, 495, *cert denied* (1984).

[Id. at 76.]

Here, the Complainant filed the instant complaint after the Custodian imposed a special service charge in order to fulfill the Complainant’s OPRA request. The Complainant asserted that redacting the record did not require the amount of time or labor asserted by the Custodian. Conversely, the Custodian asserted that the requested record was lengthy, and required a careful and meticulous review as it contain sensitive personal and financial information.

The Council reviewed the arguments of both parties, including the Custodian’s responses to the 14-point analysis pertaining to special service charges. The Council concluded that that the imposition of the charge was unwarranted and ordered the Custodian to produce the record without charge. As determined above, the Custodian complied with the Council’s September 24, 2019 Orders on October 2, 2019. Thus, because this complaint resulted in a change in the Township’s conduct, the Complainant is a prevailing party entitled to an award of reasonable attorney’s fees.

Therefore, pursuant to the Council’s September 24, 2019 Interim Order, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters, 387 N.J. Super. at 432. Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 71. Specifically, the Council required the Custodian to disclose the responsive record without imposing a special service charge, which the Custodian complied with on October 2, 2019. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 71. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council’s September 24, 2019 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

2. The Custodian improperly imposed a special service charge to fulfill the request. However, the Custodian complied with the Council's September 24, 2019 Interim Order by providing the responsive records to the Complainant. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

3. Pursuant to the Council's September 24, 2019 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Council required the Custodian to disclose the responsive record without imposing a special service charge, which the Custodian complied with on October 2, 2019. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 71. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Prepared By: Samuel A. Rosado
Staff Attorney

October 30, 2019



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LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

September 24, 2019 Government Records Council Meeting

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v.

Township of Jefferson (Morris)
Custodian of Record

At the September 24, 2019 public meeting, the Government Records Council (“Council”) considered the September 17, 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. The Custodian has not proved that a special service charge was warranted or reasonable here. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that 4 hours represented an “extraordinary amount of time and effort” to redact confidential information from the payroll register. See N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191, 199, 204 (Law Div. 2002). Thus, the Custodian shall disclose the responsive records without the imposition of a special service charge.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**
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 The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

² "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."

³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

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

Interim Order Rendered by the
Government Records Council
On The 24th Day of September 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: September 26, 2019

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 24, 2019 Council Meeting**

**Jesse Wolosky¹
Complainant**

GRC Complaint No. 2017-61

v.

**Township of Jefferson (Morris)²
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Records Relevant to Complaint: Electronic copy of: “The actual existing official 2016 year end earnings report/payroll record or the year end pay stub with all deductions, actual net income and gross income earned for each employee working and getting paid by the [Township of Jefferson (“Township”)].

Custodian of Record: Michele Reilly

Request Received by Custodian: January 4, 2017

Response Made by Custodian: January 12, 2017; January 20, 2017; January 30, 2017

GRC Complaint Received: March 23, 2017

Background³

Request and Response:

On January 4, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 12, 2017, the Custodian responded in writing, asserting that in regards to the “actual existing official 2016 year end earning report/payroll record,” there were no responsive records that exist. The Custodian then stated that for the portion of the request seeking a “year end pay stub with all deductions, actual net income and gross income earned,” a ten (10) business day extension was needed to provide the responsive record.

For “deductions,” the Custodian asserted that pursuant to Executive Order No. 26 (McGreevey 2002), “information describing a person’s finances is exempt from public access except as otherwise required by law to be discussed.” The Custodian asserted that the definition of a payroll record under N.J.A.C. 12:16-2.1 does not include itemized monetary deductions and therefore such records are not subject to disclosure. The Custodian also noted that some of those

¹ Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

² Represented by Lawrence P. Cohen, of Lavery, Selvaggi, Abromitis & Cohen, P.C. (Hackettstown, NJ).

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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

deductions could contain health care related information that would be protected under the Health Insurance Portability and Accountability Act (“HIPAA”) and Michelson v. Wyatt, 397 N.J. Super. 611 (App. Div. 2005).

Additionally, the Custodian stated that the year-end pay stub does not provide a category for “net income.” Lastly, the Complainant ultimately provided a report that contained the names of employees, their gross pay, and net pay for the year 2016.

On January 17, 2017, the Complainant responded to the Custodian asserting that the provided report was insufficient to satisfy his request. The Complainant stated that if the Township does not have a year-end earnings report for each employee with all deductions, then they should provide the payroll record/pay stub for each working employee getting paid by the Township. The Complainant gave the Custodian until January 20, 2017 to fulfill his request.

On January 20, 2017, the Custodian responded to the Complainant, stating that if he wants the year-end pay stub for each employee a special service charge would be issued. The Custodian stated that the Township had 427 employees working in 2016, and each paystub would have to be printed out and reviewed for redactions under medical, financial, and personal privacy grounds. The Custodian provided an estimate of \$470.50 for the charge, based upon an estimated twenty (20) hours of labor multiplied by the hourly rate of the lowest paid employee at \$23.52. The Custodian added that a fifty (50) percent deposit of \$235.25 was required before the request would be processed. The Custodian requested a response of five (5) business days as to whether the Complainant would accept the special service charge.

On January 23, 2017, the Complainant replied to the Custodian, relaying information he received from the Township’s Chief Financial Officer (“CFO”). The Complainant stated that he was told by the CFO that the Township could produce a PDF file showing the “year end final pay period payroll register for all active 2016 employees of the Township,” and that such record could be prepared in minutes.

On January 30, 2017, the Custodian responded to the Complainant. The Custodian stated that the Township was able to generate a PDF file with the requested information. The Custodian then stated that the report was seventy-two (72) pages. The Custodian also stated that the report contained Social Security numbers and personal financial information, and therefore each page would need to be reviewed for potential redactions as mentioned in the January 20, 2017 correspondence. The Custodian then provided a new special service charge estimate of \$94.10 for four (4) hours of labor. The Custodian also requested a 50% deposit of \$47.05 prior to processing the request.

Denial of Access Complaint:

On March 23, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the special service charge should be vacated.

The Complainant argued that a proposed special service charge must be “reasonable.” N.J.S.A. 47:1A-5(c). The Complainant noted that the GRC has adopted the six (6) factor test found in Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002). See also Rivera v. Rutgers, The State Univ. of New Jersey, GRC Complaint No. 2009-311 (May 2012). Those factors include:

(1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection and copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place.

[Courier Post, 360 N.J. Super. at 199.]

For the first factor, the Complainant argued that the volume was not large, as it consisted of a seventy-two (72) page printout of the payroll register for the Township. Regarding the second factor, the Complainant asserted that the time coverage of the data was one (1) year, but the number of pages wouldn’t necessarily be voluminous because the data was electronically stored.

On the third factor, the Complainant contended that none of the records are archived. For the fourth factor, the Complainant stated that the record does not need to be located, retrieved, or assembled since the payroll report had already been created. Regarding the fifth factor, the Complainant asserted that no supervisory time was required. For the sixth factor, the Complainant contended that no records needed to be returned their original location.

The Complainant also asserted that the Township created the format of the report using specific public data as requested by the Complainant. The Complainant asserted that the Township could have had the means to exclude or include various fields of data when creating the report, reducing the need to redact non-public data prior to creation. Thus, the Complainant argued that he should not be charged for actions that the Township could have avoided.

The Complainant contended that even if the Township did not have the means to eliminate non-public data prior to creation, redactions of Social Security numbers and wage deductions would not be so burdensome as to warrant a special service charge.

The Complainant requested that the GRC order the Custodian to disclose the records at issue without charge. The Complainant also requested that should the GRC order the Custodian to produce the records at issue in unredacted form, the GRC should find that the Complainant is a prevailing party and award a reasonable attorney’s fee.

Statement of Information:

On April 19, 2017, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 4, 2017. The Custodian

certified that she had multiple discussions with the Township's Finance Department and CFO regarding locating responsive records. The Custodian also certified that she had discussions with the Township Attorney regarding redactions. The Custodian certified that she responded in writing on January 12, 2017. The Custodian then certified that after several subsequent discussions, the Custodian responded on January 30, 2017, stating that a seventy-two (72) page report was generated comprising 200+ employees' payroll records in response to the request, and imposed a special service charge estimate of \$94.10 to review the record for redactions.

The Custodian argued that the report needed to be reviewed for potential redactions for Social Security numbers and itemized deductions, which did not fall within the definition of a payroll record under N.J.A.C. 12:16-2.1, and O'Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2008-283 (2009). Additionally, the Custodian argued that because not all employees' records contain the same itemized deductions, each record for each employee must be manually reviewed to determine which field requires a redaction. With consultation with the Township Attorney, the Custodian asserted that each employee record contained approximately ten (10) to fifteen (15) redactions, resulting in an estimated total of 2-3,000 redactions for this request. The Custodian asserted that it would take approximately four (4) hours to complete the review.

As to the Complainant's contention that the Custodian failed to meet any of the factors outlined in Courier Post, 360 N.J. Super. at 199, the Custodian asserted that while most of the factors do not apply, factor four (4) was applicable. The Custodian contended that while the report could be printed in a short amount of time, preparation would take hours due to the number of potential redactions. The Custodian asserted that the special service charge was warranted based upon the extraordinary time required to review and redact the report.

The Custodian also contended that the Complainant was incorrect in claiming that the Township had the ability to exclude certain fields before printing out the full report. The Custodian asserted that the requested record was a document in .pdf format and the Township did not have the ability to manipulate the data fields therein. The Custodian argued that even if the Township had this capability, each employee record would still need to be reviewed individually to determine what fields are appropriate for disclosure. The Custodian argued that this process could take just as long as a review of the printed report, or even longer. Additionally, the Custodian asserted that the Complainant's argument on excluding data fields was disingenuous because the Township had already provided the Complainant with a record containing only the employees' names, and their gross and net pay that he rejected.

The Custodian next argued that the estimated amount of \$94.10 for the special service charge was reasonable. The Custodian asserted that the hourly rate is based upon the lowest paid employee permitted to review confidential information. The Custodian argued that the redactions could not be done by any employee, but one who was authorized to review sensitive and confidential information such as Social Security numbers and tax information. The Custodian asserted that out of the six (6) employees who could be trusted with such information, the employee with the lowest hourly rate was paid at \$23.52 per hour. The Custodian argued that this determination was consistent with the holding in Courier Post, where the court held that a custodian

can charge the hourly rate of the lowest paid qualified employee and can demonstrate that said employee's skills were necessary to fulfill the request. Id. at 199.

The Custodian then argued that she did not unlawfully deny access to the Complainant's OPRA request. The Custodian asserted that on January 12, 2017, she provided the Complainant with a ten (10) page report containing each employee's name, gross pay, and net pay after deductions, at no cost to the Complainant. The Custodian contended that the record contained all the requested information except for the itemized deductions for each employee. The Custodian also asserted that she informed the Complainant that he was not entitled to the itemized deductions.

The Custodian asserted that if the Complainant no longer sought the itemized deductions, then the report provided on January 12, 2017 should satisfy his request. The Custodian argued that it was not until the Complainant rejected the January 12, 2017 report that warranted the special service charge.

Lastly, the Custodian argued that if the GRC found that the imposition of the special service charge was unwarranted or unreasonable, it should hold that the Custodian's actions were not knowing or willful. The Custodian asserted that conducted herself appropriately and sought the advice of counsel through the process of responding to the request. The Custodian asserted that the circumstances of this request parallel those in Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015), except that the Custodian asserted that she followed the GRC's holding and calculated the special service charge based upon the lowest level qualified employee's salary.

The Custodian argued that the evidence in the record demonstrated her good faith effort to respond to the request. The Custodian contended that the Complainant demonstrated evidence of bad faith by filing a denial of access complaint despite obtaining the information requested. The Custodian argued that if the Complainant's only motive in this action was to determine an appropriate special service charge, then he should not have refused to enter into mediation. The Custodian contended that the Complainant's rejection of mediation suggested that his motivation for filing the complaint was to punish the Township and/or obtain attorney's fees.

The Custodian requested that the GRC find that the calculated special service charge was appropriate and reasonable and/or that the Custodian did not unlawfully deny access to the Complainant's request because he was already in possession of the requested information.

Additional Submissions:

On May 18, 2017, the Complainant submitted a response to the Complainant's SOI. The Complainant argued that the Custodian failed to justify the imposition of a special service charge. The Complainant asserted that the Custodian not only conceded that five (5) of the six (6) Courier Post factors favor the Complainant but argued that the claim of satisfying the fourth (4th) factor was based on the Custodian utilizing a specific process to satisfy the request and ignoring other available avenues.

The Complainant maintained that the Township failed to adequately explain why they could not redact information in the record when it is generated. The Complainant argued that the Township failed to provide any information about the seventy-two (72) page report beyond stating that it was in .pdf format, and the Township failed to provide evidence justifying the estimated 2-3,000 redactions the reviewing employee would have to make to the report.

The Complainant argued that the sample redacted paycheck record provided by the Complainant should not be used to imply that the report at issue would have the same number of fields to redact for each employee. The Complainant contended that without additional information about the report, there was no way for the GRC to adequately determine whether the estimated special service charge reflected the true cost to the Township. The Complainant asserted that this lack of supporting evidence warranted a rejection of the special service charge in accordance with Livecchia v. Borough of Mount Arlington, 421 N.J. Super. 24, 42 (App. Div. 2011) and Smith v. Hudson County Register, 411 N.J. Super. 538, 572 (App. Div. 2010), superseded by statute on other grounds, N.J.S.A. 47:1A-5 (as amended Nov. 9, 2010).

The Complainant also asserted that while the Custodian claimed that the Township was unable to generate the report without containing confidential information, she failed to provide any information on the application used to generate the report. The Complainant argued that the Custodian's assertion that it would take an employee as much time to electronically redact the report as it would via hardcopy was without any sufficient explanation.

Lastly, the Complainant contended that the Custodian's conduct violated OPRA, asserting that the Custodian's use of alternative records and special service charges could discourage future requesters in the same position. The Complainant asserted that the Custodian's initial report failed to contain all the requested information, but upon mentioning this the Custodian went to the opposite end and demanded an initial special service charge of \$500 to print and redact the report. The Complainant contended that subsequently after delivering this initial offer, the Custodian discovered a less complicated means of obtaining the records, reducing the costs by 80%. The Complainant argued that should the GRC reject the special service charge and order disclosure, the action should encourage public agencies to be more diligent.

On May 25, 2017, the Custodian submitted a reply to the Complainant's May 18, 2017 correspondence. The Custodian argued that the Township explained in detail the process to be taken to redact the record at issue. The Custodian asserted that the Township provided an estimated number of redactions; that the personal information for each employee was different; and that the redaction process was not mechanical in which the same fields would be redacted for each employee. The Custodian maintained that each entry must be carefully read and determined which confidential information must be redacted.

The Custodian also maintained that the calculate rate for the special service charge was in accordance with the law. The Custodian asserted that the Complainant's claim that any employee could redact the report was without merit. The Custodian contended that Township was obligated to safeguard the sensitive information contained in the record; and that a qualified employee was needed decipher the abbreviations contained within the employees' payroll records and redact appropriately.

The Custodian then maintained that the estimated special service charge was based on the actual cost to the Township. The Custodian asserted that the estimated cost was explained specifically based on actual costs, and the 50% deposit reflected that estimate. The Custodian noted that should the realized costs be less than estimated, then the fee would be less than originally quoted.

The Custodian asserted that contrary to the Complainant's claims, the Township did not have the ability to manipulate the report, as it was provided to the Township from the payroll company in .pdf format. The Custodian contended that the Township was unable to remove fields from the report but was able to print a document listing the gross and net pay for each employee. The Custodian noted that this document was provided to the Complainant initially but was rejected as incomplete. The Custodian argued that the Complainant's insistence for the report at issue necessitated a review for redactions.

Lastly, the Custodian asserted that the Township reached out the Complainant on several occasions to assist in supplying the requested record. The Custodian asserted that the Complainant has yet to adequately explain why the initial record did not meet his request. The Custodian argued that while the Complainant stated that he wished to see itemized deductions, he was informed on several occasions that he was not legally entitled to see those deductions, therefore the initial record should have sufficed.

The Custodian maintained that the Township has not taken actions to discourage the Complainant from obtaining government records. The Custodian requested that the GRC find that the imposed special service charge was appropriate and reasonable, and/or that the Complainant's denial of access complaint was improper because he was already in possession of the requested information.

Analysis

Special Service Charge

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

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

[Id. (emphasis added).]

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

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

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

Moreover, OPRA provides that providing access to records electronically “shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs.” N.J.S.A. 47:1A-5(b); see also McBride v. Borough of Mantoloking (Ocean), GRC Complaint No. 2009-138 (Interim Order dated April 8, 2010). However, the foregoing does not necessarily mean that a custodian can never charge for electronic delivery unless supplies are involved. For example, the Council has also previously held that a custodian could charge a per-page copy cost for redacted records if the agency did not have ability to electronically redact same. Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). Thus, it follows that requestors seeking records electronically may be subject to the imposition of actual costs for duplication of records. N.J.S.A. 47:1A-5(b)-(c).

In the Denial of Access Complaint at issue here, the Complainant disputed the assessed special service charge of \$94.10 for 4 hours of time associated with providing the records responsive to the January 4, 2017 OPRA request. The Complainant argued that the fee was unwarranted given that the report at issue could have been generated in a short amount of time without containing the confidential information. Alternatively, the Complainant argued that redacting the report of confidential information would be an easy affair and would not require 4 hours to accomplish.

Conversely, the Custodian argued in the SOI that the fee was warranted and reasonable. The Custodian argued that the request sought year-end payroll information of 200+ active Township employees. The Custodian further argued that because the report potentially contained confidential information unique to each employee, each employee record needed to be reviewed individually to ensure confidential information such as Social Security numbers and itemized deductions are properly redacted. The Custodian certified that she needed an estimated 4 hours to perform these duties. The Custodian affirmed that the record comprised seventy-two (72) pages and needed be redacted. The Custodian certified that she charged \$23.52 per hour, which was the hourly rate of the lowest paid employee capable of reviewing the sensitive information contained in the report. The Custodian also certified that she required a 50% deposit of \$47.05 before beginning the review.

The GRC must determine whether the assessed charge was reasonable and warranted. When special service charges are at issue, the GRC will typically require a custodian to complete a 14-point analysis questionnaire prior to deciding on the charge issue. However, the facts of this complaint as presented to the GRC do not require the submission of such a questionnaire.

Here, the Complainant's OPRA request sought the year-end pay period register for all active Township employees in 2016. In the SOI, the Custodian did not certify that the records were archived; rather, she retrieved the report from the payroll company. Thus, the allotted 4 hours is based solely upon the estimated time needed to review the report and make redactions as necessary.

A review of the forgoing does not support that the expenditure of 4 hours represents an "extraordinary amount of time and effort" to review and redact the seventy-two (72) page report. See Rivera v. Rutgers, The State Univ. of New Jersey, GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). Although the Custodian relies in part on Palkowitz, GRC 2014-302, in that case the number of pages subject to review was more than twice that of the current matter and comprised of several categories of records. The GRC is not persuaded that identifying and redacting confidential information such as Social Security numbers and itemized deductions from the report constituted an extraordinary amount of time and effort here.

Accordingly, the Custodian has not proved that a special service charge was warranted or reasonable here. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that 4 hours represented an "extraordinary amount of time and effort" to redact confidential information from the payroll register. See N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. at 199, 204. Thus, the Custodian shall disclose the responsive records without the imposition of a special service charge.

Knowing & Willful

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

Prevailing Party Attorney's Fees

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has not proved that a special service charge was warranted or reasonable here. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that 4 hours represented an "extraordinary amount of time and effort" to redact confidential information from the payroll register. See N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 199, 204 (Law Div. 2002). Thus, the Custodian shall disclose the responsive records without the imposition of a special service charge.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ 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.
4. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

September 17, 2019

⁴ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁵ "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."

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.