State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

INTERIM ORDER

October 27, 2015 Government Records Council Meeting

Law Offices of Walter M. Luers, LLC
(On behalf of C.C.)
Complainant
v.
Eastern Camden County Regional School District
Custodian of Record

Complaint No. 2015-15

At the October 27, 2015 public meeting, the Government Records Council ("Council") considered the October 20, 2014 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. Because the Custodian failed to provide a specific lawful basis for redactions made to the legal bills, executive session minutes, demand letters, tort claim notices, and settlement agreements, the Custodian's response to the Complainant's OPRA request was insufficient. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008). *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-204 *et seq.* (Interim Order dated October 26, 2010).

2. The Custodian has proved that a special service charge was both reasonable and warranted. N.J.S.A. 47:1A-6. Specifically, the evidence of record supports that the requests took over 35 hours to complete. Moreover, the charge ultimately applied for both OPRA requests amounted to an hourly rate of $2.20 per hour, well below any of the identified hourly salaries of employees utilized to fulfill the OPRA request. *See* N.J.S.A. 47:1A-5(c); The Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002); Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (January 2008). Thus, notwithstanding that Mr. Epstein sought electronic delivery of the responsive records, the Custodian proved that a special service charge was still warranted.

3. The GRC must conduct an *in camera* review of only those pages of the responsive records in which the Custodian reacted information to determine the validity of the Custodian's assertion that the records are exempt in their entirety under OPRA because they contain student or parent information. *See* Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).

4. **The Custodian must deliver[1] to the Council in a sealed envelope nine (9) copies of the requested unredacted record**s **(see No. 3 above), nine (9) copies of the redacted records, a document or redaction index,[2] as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 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**.

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

6. 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 27th Day of October, 2015

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: October 28, 2015

[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."

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Executive Director
October 27, 2015 Council Meeting

Law Offices of Walter M. Luers, LLC[1] **GRC Complaint No. 2015-15**
(On behalf of C.C.)
Complainant

v.

Eastern Camden County Regional School District[2]
Custodial Agency

Records Relevant to Complaint:

July 14, 2014 OPRA request: Electronic copies via e-mail of:

1. All bills for legal services rendered in the case of C.C. from September 1, 2013, to present.
2. All invoices for legal services rendered from September 1, 2013, to present.
3. All purchase orders for legal services rendered from September 1, 2013, to present.
4. All vouchers for legal services rendered from September 1, 2013, to present.
5. All cancelled checks (front and back) for legal services rendered from September 1, 2013, to present.
6. All Board of Education ("BOE") resolutions approving legal services payments from September 1, 2013, to present.
7. All agreements for the provision of legal services from September 1, 2013, to present.

July 15, 2014 OPRA request: Electronic copies via e-mail of:

1. Any executive session minutes of Harassment, Intimidation & Bullying ("HIB") appeals from July 1, 2011, to present.
2. Any demand letters received from, and responses to, any student, their parents, or their attorneys from July 1, 2011, to present.
3. Any Tort Claim Notices received from and responses to any student, their parents, or their attorneys from July 1, 2011, to present.
4. Any settlement agreements or consent ordered entered into by the BOE with any student, their parents, or their attorneys from July 1, 2011, to present.
5. The BOE's liability policy in effect during the 2013-2014 school year.

Custodian of Record: Fred D. Wright

[1] No legal representation listed on record.
[2] Represented by Anthony I. Padovani, Esq., of Sahli & Padovani (Hammonton, NJ).

Request Received by Custodian: July 15, 2014
Response Made by Custodian: July 18, 2014
GRC Complaint Received: January 13, 2015

Background[3]

Request and Response:

On July 15, 2014, Mr. Jamie Epstein, Esq., C.C.'s attorney,[4] submitted two (2) Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. Mr. Epstein noted that the Custodian may redact all personal identifiers of students and parents leaving only their initials. On July 17, 2014, the Custodian verbally acknowledged receipt of the C.C.'s OPRA requests.

On July 18, 2014, the Custodian responded in writing, advising that the Eastern Camden County Regional School District ("District") will need an additional ten (10) calendar days in order to properly review and redact records. The Custodian noted that the District is typically short-staffed during the summer. On the same day, Mr. Epstein agreed to allow for an extension until July 25, 2014, for the second (2nd) OPRA request. However, Mr. Epstein did not agree to an extension to the first (1st) OPRA request, noting that it sought "immediate access" financial information.[5]

On July 22, 2014, the Custodian responded in writing, advising Mr. Epstein that he is prepared to provide 41 pages of financial records responsive to the Complainant's July 14, 2014, OPRA request. The Custodian noted that, due to the amount of time required to compile the responsive records, he assessed a $20.00 fee to send records electronically. The Custodian stated that, if Mr. Epstein wished to retrieve the records in person, he would charge $2.05 for hardcopies.

On July 22, 2014, Mr. Epstein e-mailed the Custodian, seeking an explanation for the $20.00 fee. On July 23, 2014, the Custodian responded, advising that according to the District's official OPRA request form, it may charge a fee for electronic delivery of records when provided on supply cost, programming, clerical and/or supervisory assistance, and substantial use of information technology. The Custodian stated that he and other staff spent in excess of one (1) hour to locate records, dismantle packets, photocopy the responsive records, reassemble and refile the packets, locate minutes and bill lists approving payments, review all detailing billing records, redact and recopy those needing redaction, and locate and copy contracts for legal services. The Custodian stated that the applicable rates were $27.68 and $28.37 per hour, with his rate being substantially higher. The Custodian averred that $20.00 was a fair estimate, given

[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.
[4] Mr. Epstein represents C.C. in actions not related to the instant Denial of Access Complaint.
[5] Mr. Epstein actually transposed the "financial records" request with the non-financial records request in his correspondence.

the circumstances. The Custodian noted that OPRA copy costs favor requestors, thus he might not be able to recover more than $.05 per page for disclosure.

On July 25, 2014, the Custodian responded in writing, advising Mr. Epstein that he is prepared to provide 138 pages of records responsive to the Complainant's July 15, 2014, OPRA request. The Custodian stated that he assessed a $60.00 fee for electronic delivery; however, Mr. Epstein could retrieve hardcopies of the records in person for a total of $6.90.

On July 25, 2014, Mr. Epstein sent a letter to the Custodian, advising that he wished to receive the records electronically. Mr. Epstein stated that he would rather pay the hardcopy cost of $8.95 for both requests. However, Mr. Epstein stated that if the Custodian him required to pay the $80.00 fee, he would do so in protest and reserve his right to file a complaint regarding the fee. Mr. Epstein stated that he enclosed two (2) checks and requested that the Custodian send back the check he did not accept.

On July 29, 2014, the Custodian e-mailed to Mr. Epstein the responsive records (with redactions) and advised that he would return the check in the amount of $8.90.

Denial of Access Complaint:

On January 13, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the Custodian's $80.00 charge should be refunded to Mr. Epstein. The Complainant contended that the Custodian imposed the fee to penalize Mr. Epstein because he sought records electronically, as opposed to hard copies. The Complainant argued that, in his July 23, 2014, e-mail, the Custodian admitted to charging for the simple task of searching and copying responsive records and not a substantial use of information technology. The Complainant asserted that, regardless of whether the Custodian made copies or scanned the records, he appeared to be misinterpreting OPRA to allow an arbitrary charge to electronically disclose records. The Complainant asserted that the charge is in violation of OPRA and the GRC's case law regarding electronic delivery of records.

Additionally, the Complainant contended that the Custodian violated OPRA by redacting portions of the 138 pages of non-financial records without providing a lawful basis for same. The Complainant requested that the GRC order the Custodian to provide a specific lawful basis for the redactions and conduct an *in camera* review of the records.

Statement of Information:

On February 25, 2015, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received Mr. Epstein's two (2) OPRA requests on July 15, 2014.

The Custodian certified that his search for the responsive records included locating the records either digitally or by hardcopy. The Custodian affirmed that, in three (3) instances, he was required to dismantle and reassemble packets of records. The Custodian certified that he utilized employees in the Business Office, as well as Custodian's Counsel, to fulfill the subject OPRA requests. The Custodian certified that he scanned the records, checked them to ensure the

redactions effectively blacked out exempt information, and set up two (2) separate e-mails to Mr. Epstein.

The Custodian certified that he responded in writing on July 22, 2014, advising Mr. Epstein that 41 pages of records responsive to the July 14, 2014, OPRA were available for a cost of $20.00 (if delivered electronically). The Custodian further certified that he responded in writing on July 25, 2014, advising Mr. Epstein that 138 pages of records responsive to the July 15, 2014, OPRA request were available for a cost of $60.00 (if delivered electronically). The Custodian affirmed that the Complainant submitted a check for $80.00, and on July 29, 2014, he e-mailed all responsive records to Mr. Epstein.

The Custodian asserted that the normal process for responding to an OPRA request should apply to the requests at issue here. The Custodian contended that most of the responsive records related to current, on-going litigation; thus, the District needed to employ a higher standard of review to ensure that they were complying with OPRA while not disclosing exempt information. The Custodian certified that the District spent 13.8 hours for direct work on the requests and 22.4 hours of research, planning, and review. Further, the Custodian noted that he conducted most of the preparation and review due to the sensitive nature of the records.

The Custodian certified that he provided the Complainant with an explanation of the fees charged for both requests. The Custodian asserted that the $20.00 charge for the first request was reasonable, given that it represented less than the hourly rates of staff involved in the process ($27.68 and $28.37). Additionally, the Custodian argued that the total $80.00 charge still represented less than his own hourly rate ($89.66). The Custodian asserted that the charge was reasonable, given the additional work necessary to locate, copy, review, redact, recopy, review again, and scan the responsive records. The Custodian asserted that he believed the fee was warranted, given the District's labor to provide the responsive records electronically.

Analysis

Sufficiency of Response

OPRA provides that "[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor." N.J.S.A. 47:1A-5(g). Thus, OPRA requires that, when providing access to redacted records, a custodian shall provide a specific lawful basis for redactions.

In Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008), the custodian responded in a timely manner by providing redacted records to the complainant; however, the custodian failed to provide a specific legal basis for said redactions. The Council held that "[t]he Custodian's response was legally insufficient under OPRA because he failed to provide a written response setting forth a detailed and lawful basis for each redaction …" Id. at 4. The Council further held that "the Custodian violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and has not borne his burden of proving the denial of access to the redacted portions was authorized by law. . ." Id. at 5. *See* Schwarz v. NJ Dep't of Human Serv., GRC Complaint No. 2004-60 (February, 2005)(setting forth the proposition that specific citations to the law that

allows a denial of access are required at the time of the denial); Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010)(noting that N.J.S.A. 47:1A-5(g) requires a custodian of record to indicate the specific basis for noncompliance).

In this matter, the Custodian disclosed records with redactions to the Complainant on July 29, 2014. However, he failed to provide a specific lawful basis for the redactions contained in the records upon providing access to same. It was not until the submission of the SOI that the Custodian argued that he redacted information pertaining to students and parents. It should also be noted that the Custodian did not include a statutory citation for these redactions in the SOI. *See* Paff v. Borough of Manasquan (Monmouth), GRC Complaint No. 2009-281 (Interim Order dated March 29, 2011)(holding that the addition of a statutory citation would have reinforced the denial of redacted information).

Therefore, because the Custodian failed to provide a specific lawful basis for redactions made to the legal bills, executive session minutes, demand letters, tort claim notices, and settlement agreements, the Custodian's response to the Complainant's OPRA request was insufficient. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-209. *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-204 *et seq.* (Interim Order dated October 26, 2010).

Special Service Charge

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

OPRA provides that "[a]ccess to electronic records and non-printed materials shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs."

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

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

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

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

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

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

Additionally, in complaints where the complainant paid an assessed fee and the Council subsequently determined that the fee was unwarranted or unreasonable, the Council has ordered the public agency to refund monies to complainant. *See* Coulter v. Twp. of Bridgewater (Somerset), GRC Complaint No. 2008-220 (Interim Order dated November 18, 2009)(*citing* Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (January 2008))(holding that the assessed special service charge was unreasonable and ordering the Custodian to refund the difference between the $5.00 fee and the actual cost of $0.96 (or $4.04)).

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." Id. However, this provision 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 a special service charge based on "an extraordinary expenditure of time and effort" to respond to the request. N.J.S.A. 47:1A-5(c).

Here, the Complainant disputed the $80.00 charge for electronic disclosure of records. The Complainant argued that OPRA provides that electronic access to records must be free of charge. N.J.S.A. 47:1A-5(b). Further, the Complainant argued that the Custodian misinterpreted OPRA to charge an arbitrary fee in order to punish Mr. Epstein for not requesting hard copies of the records. The Complainant also argued that a custodian could not charge a fee for simple tasks such as locating, copying, and scanning records.

Conversely, the Custodian argued in the SOI that the fee was warranted because of the amount of time spent to fulfill the request, which he estimated to take over 35 hours. The Custodian noted that an immense amount of work went into preparing the responsive records, and that the fee was reasonable, given the amount of time spent and the fact that the total charge was less than his own hourly rate.

Thus, 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 making a determination on the reasonableness of the charge. However, the Custodian provided enough information in the SOI to allow the GRC to forego requiring the completion of the analysis questionnaire.

The Complainant's OPRA requests sought twelve different types of records: seven (7) of the items spanned nearly eleven (11) months and the remaining five (5) items spanned just over twelve (12) months. In the SOI, the Custodian did not assert that any of the responsive records were archived; however, some of the records were bound together and needed to be dismantled in order to obtain those responsive for copying and scanning. Ultimately, the Custodian certified that he provided to the Complainant via e-mail 179 pages of records to the Complainant, some of which contained redactions. The Custodian certified that the District expended 13.8 hours working on the responsive records and 22.4 hours to research the requests, plan the response, and review all responsive correspondence. Such an extensive amount of time, coupled with the amount of records and redactions, support that a special service charge was indeed warranted in the instant matter.

Having found the proposed fee warranted, the Council must now address whether the proposed fee is reasonable. In Courier Post, 360 N.J. Super. at 204, the Court held that it would be appropriate to calculate the hourly wage rates of the clerical and professional staff involved in satisfying a request and multiplying those figures by the total hours spent, assuming that the custodian can prove that the professional level of human resource was needed to fulfill the request. Thus, as part of the calculation of a special service charge, a custodian must prove that same was based upon the lowest paid, qualified employee's hourly rate to perform the work required to respond to the subject OPRA request. *See also* Janney, GRC 2006-205.

Here, the Custodian provided three (3) hourly rates for individuals that worked on the request: 1) $27.68; 2) $28.37; and 3) $89.66. The first two rates related to staff members that aided the Custodian in responding to the Complainant's OPRA requests, while the third rate related to the Custodian. He feels that $20.00 for the first OPRA request and $60.00 for the second OPRA request, for a total of $80.00, is reasonable. Dividing $80.00 by the number of hours the Custodian certified that his office expended (36.2) amounts to approximately $2.20 an

hour, well below New Jersey's minimum wage, let alone the hourly rates set forth in the SOI. While it is indisputable that the Custodian was not the lowest paid employee capable of performing most of the tasks associated with responding to this OPRA request, the facts of this complaint support that the charge was ultimately reasonable.

Accordingly, the Custodian has proved that a special service charge was both reasonable and warranted here. N.J.S.A. 47:1A-6. Specifically, the evidence of record supports that the requests took over 35 hours to complete. Moreover, the charge ultimately applied for both OPRA requests amounted to an hourly rate of $2.20 per hour, well below any of the identified hourly salaries of employees utilized to fulfill the OPRA request. *See* N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. at 199, 204; Janney, GRC 2006-205. Thus, notwithstanding that Mr. Epstein sought electronic delivery of the responsive records, the Custodian proved that a special service charge was still warranted.

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.

In Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council[6] that accepted the custodian's legal conclusion for the denial of access without further review. The Appellate Division noted that "OPRA contemplates the GRC's meaningful review of the basis for an agency's decision to withhold government records . . . . When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers." Id. The Court stated that:

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

Id. at 355.

Further, the Court found that:

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

> We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal . . . There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC's obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

Id.

Here, the Complainant disputed redactions made to several records. Although he did not initially provide a lawful basis for redactions, the Custodian subsequently asserted that he redacted student and parent names from legal bills, executive session minutes, demand letters, tort claim notices, and settlement agreements. However, the Custodian did not include a statutory exemption, and it is unclear whether all redactions contain only student or parent identifiers. Thus, the GRC must review same in order to determine the full applicability of the cited exemptions.

Therefore, the GRC must conduct an *in camera* review of only those pages of the responsive records in which the Custodian reacted information to determine the validity of the Custodian's assertion that the records are exempt in their entirety under OPRA because they contain student or parent information. *See* Paff, 379 N.J. Super. at 346.

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. Because the Custodian failed to provide a specific lawful basis for redactions made to the legal bills, executive session minutes, demand letters, tort claim notices, and settlement agreements, the Custodian's response to the Complainant's OPRA request was insufficient. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008). *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-204 *et seq.* (Interim Order dated October 26, 2010).

2. The Custodian has proved that a special service charge was both reasonable and warranted. N.J.S.A. 47:1A-6. Specifically, the evidence of record supports that the requests took over 35 hours to complete. Moreover, the charge ultimately applied for both OPRA requests amounted to an hourly rate of $2.20 per hour, well below any of the identified hourly salaries of employees utilized to fulfill the OPRA request. *See* N.J.S.A. 47:1A-5(c); The Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002); Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (January 2008). Thus, notwithstanding that Mr. Epstein sought electronic delivery of the responsive records, the Custodian proved that a special service charge was still warranted.

3. The GRC must conduct an *in camera* review of only those pages of the responsive records in which the Custodian reacted information to determine the validity of the Custodian's assertion that the records are exempt in their entirety under OPRA because they contain student or parent information. *See* Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).

4. **The Custodian must deliver[7] to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 3 above), nine (9) copies of the redacted records, a document or redaction index,[8] as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,[9] that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order**.

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

6. 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: Frank F. Caruso
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover
Executive Director

October 20, 2015

[7] 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.
[8] The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.
[9] "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."