



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

FINAL DECISION

July 30, 2008 Government Records Council Meeting

Jennifer Dressel
Complainant

Complaint No. 2005-249

v.

Monroe Township Board of Education
Custodian of Record

At the July 30, 2008 public meeting, the Government Records Council ("Council") considered the July 23, 2008 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, accepts the Administrative Law Judge's Initial Decision dated June 23, 2008. 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 30th Day of July, 2008

Robin Berg Tabakin, Chairman
Government Records Council

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



David Fleisher, Secretary
Government Records Council

Decision Distribution Date: August 1, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
July 30, 2008 Council Meeting**

**Jennifer Dressel¹
Complainant**

GRC Complaint No. 2005-249

v.

**Monroe Township Board of Education²
Custodian of Records**

Records Relevant to Complaint:

1. All documents, e-mails, reports, and studies examined for alternative locations for the new high school prior to April 14, 2003;
2. Reports and correspondence on sites for the high school (first referendum) including EcolSciences, Inc.; and
3. All documents and reports related to research on proposed high school locations.³

Request Made: June 10, 2004, August 26, 2005, September 16, 2005 and September 29, 2005

Response Made: June 17, 2004, August 30, 2005, September 18, 2005, and September 29, 2005

Custodian: Wayne Holliday

GRC Complaint Filed: December 12, 2005

Background

September 26, 2007

Government Records Council's ("Council") Interim Order. At its September 26, 2007 public meeting, the Council considered the September 19, 2007 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 did not violate OPRA by withholding release of the requested records until the Complainant paid the balance of payment due for the cost of copying the records because, although the Custodian agreed to release to the Complainant copies of all unredacted records requested, the Complainant failed to pay the balance due for copying charges and the Custodian is not required to release copies of records until such payment is received pursuant to N.J.S.A. 47:1A-5.b., Santos v. New Jersey State

¹ No legal representation listed on record.

² Represented by Viola S. Lordi, Esq., of Wilentz, Goldman & Spitzer (Woodbridge, NJ).

³ The Complainant requested additional records; however said records are not the subject of this complaint.
Jennifer Dressel v. Monroe Township Board of Education, 2005-249 – Supplemental Findings and Recommendations of the Executive Director

Parole Board, GRC Case No. 2004-74 (August, 2004), Cuba v. Northern State Prison, GRC Case No. 2004-146 (February, 2005) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

2. The complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances because the Custodian certified the requested records were exempt from disclosure and withheld them for approximately thirteen (13) months following receipt of the Complainant's request, then offered to release the records without citing a specific change in circumstances relevant to the exemption which would have permitted such disclosure.

October 2, 2007

Council's Interim Order distributed to the parties.

November 19, 2007

Complaint referred to the Office of Administrative Law.

June 23, 2008

Administrative Law Judge's ("ALJ") Initial Decision. The ALJ held that:

"[b]ased upon the submissions of the parties, I **FIND** that it is undisputed that [the Custodian] acted upon the advice of...counsel to the Board of Education, when he denied [the Complainant] access to the several documents that he claimed were exempt from disclosure."

The ALJ also stated that:

"[t]he 'advice of counsel' defense to a charge that someone acted in violation of their legal duty was considered in In re Zisa, 385 N.J. Super. 188 (App. Div. 2006). There a municipal officer relied upon the advice of the City Attorney that he did not have a conflict of interest regarding an award of a paving contract. The administrative law judge and the Local Finance Board concluded that he violated the Local Government Ethics Law, specifically in regard to N.J.S.A. 40A:9-22.5(d). The Appellate Division, relying in part on the decision of the Executive Commission on Ethical Standards, in In re Howard, 93 N.J.A.R. 2d (Vol.5A) 1 (Executive Comm'n on Ethical Standards), aff'd as modified, 94 N.J.A.R. 2d (Vol.5A) 1 (App. Div. 1994), held that Zisa was entitled to rely upon the advice he had received and therefore did not violate the Ethics Law. In Howard, the Executive Commission found that there were four prerequisites to the defense of advice of counsel. These are

1. That the approval or advice was received prior to the action being taken.
2. That the individual who offered the advice or approval relied upon possessed authority or responsibility with regard to ethical issues.

3. That the individual seeking advice or approval made a full disclosure of all pertinent facts and circumstances.
4. That the individual comply with the advice received, including any restrictions it might contain.

[In re Howard, supra. At 14; In re Zisa, 385 N.J. Super. At 198-199.]”

The ALJ continued to state that:

“[i]n order for [the Complainant] to prevail and for a civil penalty to be imposed upon [the Custodian], [the Complainant] would have to establish by a preponderance of the credible evidence that [the Custodian] acted in ‘knowing and willful’ violation of OPRA, which...would require evidence that he acted intentionally and deliberately, with knowledge of the wrongfulness of his actions, and not merely negligently, heedlessly, or unintentionally. And given the assertion by [the Custodian] of his reliance upon...legal advice, it would be necessary to demonstrate that [the Custodian], and perhaps [legal counsel] actually knew that advice to be legally incorrect and that [the Custodian] acted in bad faith by relying on that advice, or that he did not make full disclosure to [legal counsel] of the pertinent facts and circumstances or that [the Custodian], once advised by [legal counsel], did not act in accordance with that advice.”

Further, the ALJ concluded that:

“...[the Custodian] acted upon the advice of counsel, that that advice was provided within the standards established in Howard and Zisa, and that the complainant has failed to establish any genuine issues of material fact as to advice of counsel defense or to show that [the Custodian] acted in knowing and willful disregard of the legal requirements of OPRA. Therefore, this complaint is hereby dismissed.”

Analysis

No analysis is required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council accept the Administrative Law Judge’s Initial Decision dated June 23, 2008. No further adjudication is required.

Prepared By: Dara Lownie
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

July 23, 2008



State of New Jersey
GOVERNMENT RECORDS COUNCIL
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INTERIM ORDER

September 26, 2007 Government Records Council Meeting

Jennifer Dressel
Complainant

Complaint No. 2005-249

v.

Monroe Township Board of Education
Custodian of Record

At the September 26, 2007 public meeting, the Government Records Council ("Council") considered the September 19, 2007 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not violate OPRA by withholding release of the requested records until the Complainant paid the balance of payment due for the cost of copying the records because, although the Custodian agreed to release to the Complainant copies of all unredacted records requested, the Complainant failed to pay the balance due for copying charges and the Custodian is not required to release copies of records until such payment is received pursuant to N.J.S.A. 47:1A-5.b., Santos v. New Jersey State Parole Board, GRC Case No. 2004-74 (August, 2004), Cuba v. Northern State Prison, GRC Case No. 2004-146 (February, 2005) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
2. The complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances because the Custodian certified the requested records were exempt from disclosure and withheld them for approximately thirteen (13) months following receipt of the Complainant's request then offered to release the records without citing a specific change in circumstances relevant to the exemption which would have permitted such disclosure.



Interim Order Rendered by the
Government Records Council
On The 26th Day of September, 2007

Robin Berg Tabakin, Vice Chairman
Government Records Council

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

Kathryn Forsyth
Government Records Council

Decision Distribution Date: October 2, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 26, 2007 Council Meeting**

**Jennifer M. Dressel¹
Complainant**

GRC Complaint No. 2005-249

v.

**Monroe Township Board of Education²
Custodian of Records**

Records Relevant to Complaint:

1. All documents, e-mails, reports, and studies examined for alternative locations for the new high school prior to April 14, 2003;
2. Reports and correspondence on sites for the high school (first referendum) including EcolSciences, Inc.; and
3. All documents and reports related to research on proposed high school locations.³

Request Made: June 10, 2004, August 26, 2005, September 16, 2005 and September 29, 2005

Response Made: June 17, 2004, August 30, 2005, September 18, 2005, and September 29, 2005

Custodian: Wayne Holliday

GRC Complaint filed: December 12, 2005

Background

December 14, 2006

Government Records Council's ("Council") Interim Order. At its December 14, 2006 public meeting, the Council considered the December 7, 2006 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 there was insufficient evidence to determine if the documents, or portions, thereof, were exempt from access. Therefore, the Council should perform an *in camera* inspection of the following requested records:

¹ No legal representation listed on record.

² Represented by Bertram E. Busch, Esq. of Busch and Busch, L.L.P. (North Brunswick, NJ).

³ Additional documents were requested by the Complainant; however they are not the subject of this complaint.

1. Letter dated February 20, 2002 from Jerry Tague, Director of Facilities for the Monroe Township schools to Jim Morton, A.I.A., of MRM Architecture with enclosed wetland maps prepared by Tom Auffenorde of EcolSciences, Inc.
2. Letter dated February 6, 2002 from Mr. Tague to Mr. Paul authorizing investigation of proposed sites to determine the approximate extent of wetlands
3. Letter dated February 6, 2006 from Mr. Paul to Mr. Tague setting forth proposal to provide environmental consulting services for four (4) properties
4. Privileged and confidential notes dated February 5, 2002 prepared by Mr. Tague regarding new high school property investigation
5. Letter dated February 4, 2002 from Mr. Paul to Mr. Tague regarding the evaluation of prospective high school sites
6. Letter dated January 28, 2002 from Mr. Tague to Mr. Morton identifying block, lot, and acreage for two potential building sites
7. Memo dated August 20, 2001 from Mr. Tague to Mr. Holliday regarding a future building site deemed unacceptable due to railroad tracks and wetlands
8. Jerry Tague's letter of October 8, 2002 to Thomas Auffenorde
9. McCarter & English, Esqs. letter dated August 14, 2002
10. Jerry Tague's letter of August 7, 2002 to Gary Hall of McCarter & English
11. Meeting notes dated July 31, 2002
12. Telephone conversation log dated July 26, 2002 signed by Jerry Tague re: telephone conversation with Gary Hall, Esq.
13. Jerry Tague's letter of July 19, 2002 to Jim Morton
14. Thomas Auffenorde's letter of July 17, 2005 to Jerry Tague
15. USGS Site Location prepared by EcolSciences, Inc. for Block 14, Lots 12.01 and 12.02
16. Photograph log for Block 14, Lots 12.01 and 12.02
17. Letter dated July 16, 2002 from Jerry Tague to Gary Hall
18. Letter dated July 11, 2002 from Jerry Tague to Thomas Auffenorde
19. Letter dated May 3, 2002 from Thomas Auffenorde to Jerry Tague
20. Letter dated July 10, 2002 from Gary T. Hall, Esq. to Jerry Tague together with Attorney's Affidavit and application forms
21. Application for a Letter of Interpretation – Block 14, Lot 12
22. Draft letter dated May 3, 2002 from Thomas Auffenorde to Mark Fedorowycz with enclosures, including draft letter to Sharon Doerfler, Clerk, re: Freshwater Wetlands Letter of Interpretation (LOI) Application Checklist and Fee Table, USGS Site Location, Block 14, Lot 12 prepared by EcolSciences, Inc and attachments, and photograph log
23. Facsimile cover sheet from Jerry Tague to Gary Hall, Esq. (undated)
24. Letter dated May 13, 2002 from Feist Engineering re: Topographic Mapping of Block 14, Lot 12
25. Project meeting notes dated April 25, 2002
26. Letter dated April 11, 2002 from Jerry Tague to Ken Paul of EcolSciences, Inc with proposal of April 12, 2002 signed by Mr. Tague on April 11, 2002
27. Letter dated April 8, 2002 from James E. Morton to Dr. Ferrie re: Project #02103 with attachments
28. Letter dated March 18, 2002 from Jerry Tague to Jim Morton

29. Telephone conversation log dated March 14, 2002 signed by Jerry Tague re: conversation with Mike Rogers
30. Meeting notes dated March 13, 2002 with attached maps
31. Letter dated March 12, 2002 from Jerry Tague to Thomas Auffenorde with attachments
32. Letter dated March 12, 2002 from James E. Morton to Jerry Tague
33. Letter from Jim Morton to Jerry Tague with maps (2 pages) attached
34. Telephone conversation log dated March 1, 2002 signed by Jerry Tague re: Edward "Ned" Barclay
35. Letter dated March 13, 2002 from EcolSciences, Inc. to Jerry Tague re: Block 14, Lots 10.02, 11.01, 11.02 and 12 with maps attached
36. Letter dated February 22, 2002 from Jerry Tague to Thomas Auffenorde

December 19, 2006

Letter from the GRC to the Custodian. The GRC requested the Custodian forward to the GRC six (6) copies of the unredacted records for *in camera* inspection pursuant to the Council's December 14, 2006 Interim Order, and a legal certification that the records being provided are the records requested by the Council.

December 22, 2006

Certification of the Custodian with the following attachments:

- Six (6) copies of the unredacted records responsive to the Council's Interim Order
- Redaction index detailing the redactions and the asserted lawful basis for such redactions

April 11, 2007

Letter from the Custodian's Counsel to the GRC. The Custodian's Counsel forwarded a copy of the decision rendered in Martin O'Shea v. West Milford Board of Education, Docket No. A-2026-05T5 (App. Div. April 5, 2007).

May 14, 2007

E-mail from the GRC to both parties. The GRC requested the present position of the parties with respect to this matter.

May 14, 2007

Reply e-mail from the Custodian's Counsel to the GRC. The Custodian's Counsel forwarded a copy of correspondence dated October 31, 2006, wherein the Custodian advised the GRC that he agreed to release all requested documents to the Complainant if the Complainant paid the copy charges and executed a general release. The Custodian's Counsel states the Custodian is still willing to abide by that offer.

May 14, 2007

Reply e-mail from the Complainant to the GRC. The Complainant states she is not interested in any settlement outside the GRC's adjudication of this matter.

June 5, 2007

E-mail from the GRC to the Custodian's Counsel. The GRC advised the Custodian's Counsel that OPRA does not provide for execution of any form of release by the Complainant as a condition precedent to release of government records. Inquiry was also made as to whether the Custodian made an offer directly to the Complainant with respect to settlement of this matter.

June 11, 2007

E-mail from the Custodian's Counsel to the GRC. The Custodian's Counsel forwarded a copy of the Custodian's June 7, 2007 letter to the Complainant, wherein the Custodian removed the requirement that the Complainant execute a release and offered to provide copies of all of the unredacted records requested by the Complainant upon the Complainant's payment of a \$31.50 copying charge balance.

June 14, 2007

E-mail from the Custodian's Counsel to the GRC. The Custodian's Counsel forwarded a copy of a letter sent to the Complainant requesting a reply to the Custodian's June 7, 2007 letter.

June 25, 2007

E-mail from the Custodian's Counsel to the GRC. The Custodian's Counsel forwarded a certification prepared by the Custodian, wherein the Custodian certifies that he offered to provide the Complainant with copies of all of the records requested by her. The Custodian further certifies that he has not provided the Complainant with those copies because she has not paid a \$31.50 balance for the cost of copying the records. The e-mail also contained a copy of an e-mail dated June 14, 2007 and sent from the Complainant to the GRC. The e-mail questioned the purpose of the Custodian's June 7, 2007 letter to the Complainant.

July 10, 2007

Telephone call from the GRC to Custodian's Counsel. The GRC contacted the Custodian's Counsel to determine if there was a specific change in circumstances which occurred on or about October 25, 2006 which prompted the Custodian to then offer to disclose records previously held exempt from disclosure. The Custodian's Counsel said he would check the file and promptly inform the GRC if a specific reason for release in October 2006 was evident.

July 12, 2007

E-mail from the Custodian's Counsel. The Custodian's Counsel forwarded a certification dated July 11, 2007 in response to the GRC's request for an explanation of any change in circumstances which occurred on or about October 25, 2006 that prompted the Custodian to then offer to disclose records previously held exempt from disclosure.

Analysis

Whether the Custodian violated OPRA by withholding release of the requested records until the Complainant paid the balance of payment due for the cost of copying the records?

OPRA provides:

“A copy or copies of a government record *may be purchased* by any person upon payment ... of the actual cost of duplicating the record. Except as otherwise provided by law or regulation, the fee assessed ... shall not exceed the following: first page to tenth page, \$0.75 per page; eleventh page to twentieth page, \$0.50 per page; all pages over twenty, \$0.25 per page.” (Emphasis added) N.J.S.A. 47:1A-5.b.

A legal basis for the public purchase of government records predates not only OPRA, but also the Right-to-Know Law. The New Jersey Supreme Court in Moore v. Board of Freeholders of Mercer County, 39 N.J. 26, 30 (1962), after considering and rejecting the feasibility of requestors using their own equipment to make copies, stated “...producing a photocopy can best be obtained by requiring the proper official to furnish such copy *at a reasonable cost...*” (emphasis added). More recently, the court in Dugan v. Camden City Clerk’s Office, 376 N.J. Super. 271, 279 (App. Div. 2005) citing Moore, found that “...fees allowable under the common law doctrine are consistent with those allowable under OPRA.”

The GRC has consistently held that the Complainant must pay the copy fee *prior to the release of the records* from the Custodian to the Complainant (emphasis added). In Santos v. New Jersey State Parole Board, GRC Complaint No. 2004-74 (August 2004), where a custodian’s request for payment of copying costs was ignored by the requestor, the GRC determined that “the custodian did not receive payment for the actual duplication cost of the requested records, therefore, was not required under OPRA to release said copies.” Subsequently, in Cuba v. New Jersey Department of Corrections, GRC Complaint No. 2004-146 (February 2005), where the requested record was withheld from release pending payment of the statutory copying fee, the GRC held that “the Custodian was proper in withholding the release of the requested record until receiving payment for the copying fee from the Complainant.” The GRC again held in Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006), where financial disclosure reports were requested but not released pending payment of the copying fee by the Complainant, that “the Custodian...is not required to release said records until payment is received pursuant to N.J.S.A. 47:1A-5.b.”

In the instant complaint, the Complainant by request dated September 29, 2005, specifically requested copies of records. The Custodian by letter dated June 7, 2007, offered to provide the Complainant with copies of all of the records she requested in unredacted form. The only requirement the Custodian imposed upon the Complainant was that the Complainant finalize her purchase of the requested records by paying the outstanding copy charge balance of \$31.50 pursuant to the provisions of N.J.S.A. 47:1A-5.b. The Custodian included a breakdown of the copy fee charges in his June 7, 2007

letter to the Complainant. The Custodian applied an existing credit of \$16.25 toward \$47.75 in copying charges leaving a balance due of \$31.50. The copy charges calculated by the Custodian did not exceed the OPRA statutory limitations.

The Complainant has not paid the balance of copy charges due for the records she requested. Accordingly, since the Complainant has failed to consummate the purchase of the requested records, the Custodian is not required under OPRA to release the requested copies pursuant to N.J.S.A. 47:1A-5.b and consistent with the Council's decisions in Santos v. New Jersey State Parole Board, GRC Complaint No. 2004-74 (August 2004), Cuba v. New Jersey Department of Corrections, GRC Complaint No. 2004-146 (February 2005) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

Whether the Custodian's delay in offering to disclose the requested records rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

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:

“... If 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 at 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 (Berg); 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 (App. Div. 1996) at 107).

The Complainant's OPRA requests were dated June 10, 2004, August 26, 2005, September 16, 2005 and September 29, 2005. The Custodian responded to each of the Complainant's requests within the statutorily mandated time frame. The Custodian

responded to the Complainant's June 10, 2004 request on June 17, 2004 providing her with the records responsive to her request. The Custodian responded to the Complainant's August 26, 2005 request on August 30, 2005 requesting more specific information so the appropriate records could be provided. The Custodian responded to the Complainant's September 16, 2005 request on September 18, 2005 allowing her to view the records responsive to her request on September 27, 2005. The Custodian responded to the Complainant's September 29, 2005 request on that same date requesting a deposit so copies could be made for her.

The Complainant picked up her copies of the requested records on October 11, 2005 and noted that not all of the records she requested were included. She sent a letter dated October 14, 2005 to the Custodian requesting the balance of the copies, which comprised all of the records she flagged upon viewing same on September 27, 2005. The Custodian's Counsel sent a letter dated October 18, 2005 to the Complainant stating that many of the records she requested are exempt from disclosure as advisory, consultative or deliberative material and attorney-client privileged material.

The Complainant filed a Denial of Access Complaint with the GRC on December 12, 2005. While the complaint was being investigated, the Custodian's Counsel provided to the GRC a certification dated October 25, 2006 which offered to release all of the documents that had been withheld in return for the Complainant's execution of a general release and payment of the copying charge balance. No reason was given by the Custodian regarding why he was willing to release the records approximately thirteen (13) months following the Complainant's September 29, 2005 OPRA request. On October 30, 2006, the Complainant informed the GRC she did not agree to the terms of the offer made by the Custodian's Counsel. The Council entered an Interim Order dated December 14, 2006, wherein the Council ordered an *in camera* inspection of the requested documents withheld by the Custodian. On June 7, 2007 the Custodian removed the requirement that the Complainant execute a release and offered to provide copies of all of the unredacted records requested by the Complainant upon the Complainant's payment of the copying charge balance.⁴

On July 10, 2007, the GRC telephoned the Custodian's Counsel to determine if there was a change of circumstances relevant to the previously asserted exemption that would have permitted release of the records on or about October 25, 2006 when the Custodian first made the offer to release them. The Custodian's Counsel did not reply directly to the GRC's query, but instead provided a certification dated July 11, 2007 that provided a chronology of events commencing the date of the Complainant's records request as understood by the Custodian.

The Custodian's Counsel certifies that the Custodian received and answered the GRC's communications in an accurate and timely manner. The GRC does not dispute these assertions. The record does not, however, support some of Counsel's assertions

⁴ The GRC advised the Custodian's Counsel that disclosure of records in exchange for a release of liability was not appropriate under OPRA.

which are relevant to the Custodian's decision to release the records to the Complainant on or about October 25, 2006.

In paragraph 7 of the certification, Counsel avers that the GRC inquired on October 23, 2006 whether the Custodian would engage in mediation; however, the record reveals that the Custodian's Counsel had already refused mediation. By letter dated January 19, 2006, the Custodian's Counsel forwarded a signed statement from the Custodian that clearly declined mediation.

In paragraph 8 of the certification, Counsel certifies that in a telephone conversation with the GRC subsequent to October 23, 2006, Senior Case Manager Dara Lownie set a deadline of November 2, 2006 for Counsel to submit to the GRC a certification stating that the Custodian would produce all of the documents which had been withheld subject to the condition that the Complainant agree to issue a general release after paying the standard copying costs of those documents. The record reflects that such a certification was executed on October 25, 2006 by the Custodian's Counsel. The record does not, however, support Counsel's assertion in paragraph 8 that same was requested by the GRC staff. The GRC faxed a letter at 11:31 a.m. on October 23, 2006 to the Custodian's Counsel requesting a redaction index listing all records responsive to the Complainant's request, as well as the legal basis upon which the Custodian relied in denying access to records which were not disclosed or redacted. The letter also listed some prior decisions analyzing denial of access based upon advisory, consultative or deliberative material. The letter required a response from the Custodian no later than October 27, 2006. Such a letter would be inconsistent with the GRC's request for the type of document described in paragraph 8 of Counsel's certification.

The Custodian's Counsel is correct in asserting that there was a deadline of November 2, 2006 imposed by Senior Case Manager Lownie. The record indicates the deadline was provided in a phone conversation between Ms. Lownie and the Custodian's Counsel on the afternoon of October 23, 2006, wherein the GRC granted an extension of time from October 27, 2006 until November 2, 2006 for the Custodian to remit the redaction index requested in the GRC's October 23, 2006 letter. The telephone conversation was confirmed by e-mail dated October 23, 2006 at 3:10 p.m. in which Ms. Lownie stated she was "*extending* [the Custodian's] response time to the close of business on November 2, 2006." (Emphasis added).

No independent confirmation of the facts asserted in Counsel's certification germane to the Custodian's decision on or about October 25, 2006 to disclose documents previously withheld from the Complainant have been found in the evidence of record. Further, no reason other than what was contained in Counsel's July 11, 2007 certification was provided to the GRC explaining why the Custodian on October 25, 2006 offered to disclose records previously held exempt from disclosure.

Because the Custodian was willing to release the records responsive to the Complainant's September 29, 2005 OPRA request approximately thirteen (13) months following receipt of the request without citing a specific change in the circumstances which previously precluded disclosure, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely

negligent, heedless or unintentional. As such, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not violate OPRA by withholding release of the requested records until the Complainant paid the balance of payment due for the cost of copying the records because, although the Custodian agreed to release to the Complainant copies of all unredacted records requested, the Complainant failed to pay the balance due for copying charges and the Custodian is not required to release copies of records until such payment is received pursuant to N.J.S.A. 47:1A-5.b., Santos v. New Jersey State Parole Board, GRC Case No. 2004-74 (August, 2004), Cuba v. Northern State Prison, GRC Case No. 2004-146 (February, 2005) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
2. The complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances because the Custodian certified the requested records were exempt from disclosure and withheld them for approximately thirteen (13) months following receipt of the Complainant's request then offered to release the records without citing a specific change in circumstances relevant to the exemption which would have permitted such disclosure.

Prepared By:

John E. Stewart
Case Manager/*In Camera* Attorney

Approved By:

Catherine Starghill, Esq.
Executive Director

September 19, 2007



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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ACTING COMMISSIONER LUCILLE DAVY
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CATHERINE STARGHILL Esq., Executive Director

INTERIM ORDER

December 14, 2006 Government Records Council Meeting

Jennifer Dressel
Complainant

Complaint No. 2005-249

v.

Monroe Township Board of Education
Custodian of Record

At the December 14, 2006 public meeting, the Government Records Council (“Council”) considered the December 7, 2006 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 there is insufficient evidence to determine if the documents, or portions, thereof, are exempt from access. Therefore, the Council should perform an *in camera* inspection of the following requested records:

1. Letter dated February 20, 2002 from Jerry Tague, Director of Facilities for the Monroe Township schools to Jim Morton, A.I.A., of MRM Architecture with enclosed wetland maps prepared by Tom Auffenorde of EcolSciences, Inc.
2. Letter dated February 6, 2002 from Mr. Tague to Mr. Paul authorizing investigation of proposed sites to determine the approximate extent of wetlands
3. Letter dated February 6, 2006 from Mr. Paul to Mr. Tague setting forth proposal to provide environmental consulting services for four (4) properties
4. Privileged and confidential notes dated February 5, 2002 prepared by Mr. Tague regarding new high school property investigation
5. Letter dated February 4, 2002 from Mr. Paul to Mr. Tague regarding the evaluation of prospective high school sites
6. Letter dated January 28, 2002 from Mr. Tague to Mr. Morton identifying block, lot, and acreage for two potential building sites
7. Memo dated August 20, 2001 from Mr. Tague to Mr. Holliday regarding a future building site deemed unacceptable due to railroad tracks and wetlands
8. Jerry Tague’s letter of October 8, 2002 to Thomas Auffenorde
9. McCarter & English, Esqs. letter dated August 14, 2002
10. Jerry Tague’s letter of August 7, 2002 to Gary Hall of McCarter & English
11. Meeting notes dated July 31, 2002



12. Telephone conversation log dated July 26, 2002 signed by Jerry Tague re: telephone conversation with Gary Hall, Esq.
13. Jerry Tague's letter of July 19, 2002 to Jim Morton
14. Thomas Auffenorde's letter of July 17, 2005 to Jerry Tague
15. USGS Site Location prepared by EcolSciences, Inc. for Block 14, Lots 12.01 and 12.02
16. Photograph log for Block 14, Lots 12.01 and 12.02
17. Letter dated July 16, 2002 from Jerry Tague to Gary Hall
18. Letter dated July 11, 2002 from Jerry Tague to Thomas Auffenorde
19. Letter dated May 3, 2002 from Thomas Auffenorde to Jerry Tague
20. Letter dated July 10, 2002 from Gary T. Hall, Esq. to Jerry Tague together with Attorney's Affidavit and application forms
21. Application for a Letter of Interpretation – Block 14, Lot 12
22. Draft letter dated May 3, 2002 from Thomas Auffenorde to Mark Fedorowycz with enclosures, including draft letter to Sharon Doerfler, Clerk, re: Freshwater Wetlands Letter of Interpretation (LOI) Application Checklist and Fee Table, USGS Site Location, Block 14, Lot 12 prepared by EcolSciences, Inc and attachments, and photograph log
23. Facsimile cover sheet from Jerry Tague to Gary Hall, Esq. (undated)
24. Letter dated May 13, 2002 from Feist Engineering re: Topographic Mapping of Block 14, Lot 12
25. Project meeting notes dated April 25, 2002
26. Letter dated April 11, 2002 from Jerry Tague to Ken Paul of EcolSciences, Inc with proposal of April 12, 2002 signed by Mr. Tague on April 11, 2002
27. Letter dated April 8, 2002 from James E. Morton to Dr. Ferrie re: Project #02103 with attachments
28. Letter dated March 18, 2002 from Jerry Tague to Jim Morton
29. Telephone conversation log dated March 14, 2002 signed by Jerry Tague re: conversation with Mike Rogers
30. Meeting notes dated March 13, 2002 with attached maps
31. Letter dated March 12, 2002 from Jerry Tague to Thomas Auffenorde with attachments
32. Letter dated March 12, 2002 from James E. Morton to Jerry Tague
33. Letter from Jim Morton to Jerry Tague with maps (2 pages) attached
34. Telephone conversation log dated March 1, 2002 signed by Jerry Tague re: Edward "Ned" Barclay
35. Letter dated March 13, 2002 from EcolSciences, Inc. to Jerry Tague re: Block 14, Lots 10.02, 11.01, 11.02 and 12 with maps attached
36. Letter dated February 22, 2002 from Jerry Tague to Thomas Auffenorde

Interim Order Rendered by the
Government Records Council
On The 14th Day of December, 2006

Robin Berg Tabakin, Vice Chairman & Secretary
Government Records Council

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

Michelle Richardson
Government Records Council

Decision Distribution Date: December 19, 2006

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 14, 2006 Council Meeting**

**Jennifer Dressel¹
Complainant**

GRC Complaint No. 2005-249

v.

**Monroe Township Board of Education²
Custodian of Records**

Records Relevant to Complaint:

1. All documents, e-mails, reports, and studies examined for alternative locations for the new high school prior to April 14, 2003;
2. Reports and correspondence on sites for the high school (first referendum) including EcolSciences, Inc.; and
3. All documents and reports related to research on proposed high school locations.³

Request Made: June 10, 2004, August 26, 2005, September 16, 2005 and September 29, 2005

Response Made: June 17, 2004, August 30, 2005, September 18, 2005, and September 29, 2005

Custodian: Wayne Holliday

GRC Complaint filed: December 12, 2005

Background

June 10, 2004

Complainant's Open Public Records Act ("OPRA") request. The Complainant is seeking all documents and reports related to research on proposed high school locations.

June 17, 2004

Custodian's response to the Complainant's OPRA request, five (5) business days following the date of said request. The Custodian provides the Complainant with two (2) pages responsive to her request with a copy charge of \$0.75 per page.

August 26, 2005

¹ No legal representation on record.

² Represented by Bertram E. Busch of Busch and Busch, LLP (North Brunswick, NJ.)

³ Additional documents were requested by the Complainant; however they are not the subject of this complaint.

Complainant's second OPRA request. The Complainant is seeking reports and correspondence on sites for the high school (first referendum) including EcolSciences, Inc.

August 30, 2005

Custodian's response to the Complainant's second OPRA request, two (2) business days following the date of said request. The Custodian requests that the Complainant provide more specific information so that the appropriate documents can be provided.

September 16, 2005

Complainant's third OPRA request. The Complainant is seeking to view all documents, e-mails, reports, and studies examined for alternative locations for the new high school prior to April 14, 2003.

September 18, 2005

Custodian's response to the Complainant's third OPRA request, one (1) business day following the date of said request. The Custodian states that the Complainant is able to view the records responsive to her request.

September 29, 2005

Complainant's fourth OPRA request. The Complainant is seeking copies of all documents, e-mails, reports, and studies examined for alternative locations for the new high school prior to April 14, 2003.

September 29, 2005

Custodian's response to the Complainant's fourth OPRA request. The Custodian states that a \$60.00 deposit is required for copies of the requested records.

October 14, 2005

Letter from Complainant to Custodian. The Complainant states that her letter is in reference to her September 16, 2005 OPRA request. She asserts that on September 27, 2005, she viewed a large volume of documents and flagged specific documents she wanted copied, but claims that staff advised that the copy machine was down and that she could receive said copies at a later date. The Complainant claims that staff later advised her, after she indicated she wanted copies of all the documents she viewed, that she needed to fill out another OPRA request for the documents she wanted copied and provide a \$60.00 deposit for said copies. On October 11, 2005, the Complainant states she picked up her request and discovered that she received copies of only a portion of the documents she had viewed on September 27, 2005. The Complainant states that she wants copies of all the documents she originally viewed and flagged to be copied.

October 18, 2005

Letter from Custodian's Counsel to Complainant. Counsel states that the Complainant's OPRA requests dated September 16, 2005 and September 29, 2005 have been forwarded to him. He states that N.J.S.A. 47:1A-1.1 provides that inter-agency or intra-agency advisory, consultative, or deliberative material, as well as records within the attorney-client privilege are exempt from disclosure. Counsel asserts that many of the documents requested fall within the exemptions listed above. Additionally, Counsel

states that although the Complainant did not accept the Custodian's offer of documents that are releasable under OPRA, said documents are still available if the Complainant wishes to pick them up.

November 4, 2005

Letter from Complainant to Custodian. The Complainant contends that the Custodian waived the claimed exemptions to the requested documents when he allowed her to view the documents on a previous date. She also requests to view or obtain a copy of the privilege log.

November 15, 2005

Letter from Custodian's Counsel to Complainant. Counsel asserts that the Monroe Township Board of Education (BOE) denies that any privilege was waived when the Custodian allowed the Complainant to view documents which are otherwise exempt from disclosure under OPRA. Counsel cites Rule 5:30 of the New Jersey Rules of Evidence and N.J.S.A. 2A:84A-29. He asserts that under these citations, a privilege may be waived only when the holder of the privilege has "without coercion and with knowledge of his right or privilege made disclosure of any part of the privileged matter."

Further, Counsel contends that he did not review the Complainant's September 16, 2005 OPRA request as the Custodian did not submit said request for review. As such, Counsel claims that the Custodian did not recognize that some of the records responsive constituted inter-agency or intra-agency advisory, consultative, or deliberative material nor records within the attorney-client privilege.

Additionally, Counsel states that OPRA does not require him to maintain a privilege log and OPRA also does not require him to create one.

December 12, 2005

Denial of Access Complaint filed with the Government Records Council ("GRC") with the following attachments:

- Complainant's June 10, 2004 OPRA request
- Complainant's August 26, 2005 OPRA request
- Complainant's September 16, 2005 OPRA request
- Complainant's September 29, 2005 OPRA request
- Monroe Township Board of Education's check no. 112801 for \$43.75 payable to the Complainant
- Letter from Complainant to Custodian dated October 14, 2005
- Letter from Complainant to Custodian dated November 4, 2005
- Letter from Custodian's Counsel to Complainant dated November 15, 2005
- Letter from Custodian's Counsel to Complainant dated October 18, 2005

The Complainant claims that at the BOE meeting following her second OPRA request, dated August 26, 2005, the Custodian claimed to have no idea what documents she was requesting. She alleges that the Custodian offered to send a courier to the home of another requestor to obtain copies of records that she had recently received, which are the same records being requested by the Complainant. The Complainant states that she informed the Custodian that she wanted her own copies from him but that he is not required to produce documents that do not exist on file with the BOE.

December 13, 2005

Offer of Mediation sent to both parties. Neither party agreed to mediate this case.

December 21, 2005

Request for Statement of Information sent to the Custodian.

January 13, 2006

Letter of representation from the Custodian’s Counsel.

January 19, 2006

Custodian’s Statement of Information (“SOI”) with the following attachments:

- Complainant’s September 16, 2005 OPRA request
- Complainant’s September 29, 2005 OPRA request
- Complainant’s check no. 1519 dated September 29, 2005 in the amount of \$60.00 payable to Monroe Township Board of Education
- Complainant’s November 4, 2005 OPRA request
- Complainant’s second November 4, 2005 OPRA request
- Letter from Complainant to Custodian dated October 14, 2005
- E-mail from Complainant to Custodian’s Counsel dated October 18, 2005
- Letter from Complainant to Custodian dated November 4, 2005
- Letter from Custodian’s Counsel to Complainant dated October 18, 2005
- Letter from Custodian’s Counsel to Complainant dated November 15, 2005

The Custodian certifies receiving the Complainant’s request on September 16, 2005, as well as receiving an additional request on September 29, 2005 for copies of the documents the Complainant viewed on or about September 27, 2005. The Custodian also certifies receiving the Complainant’s October 14, 2005 letter in which the Complainant claims that when she went to pick up the requested copies on October 11, 2005, she was not provided with all the documents she had previously been permitted to view and select for copies to be made. Additionally, the Custodian certifies that his Counsel received an e-mail from the Complainant on October 21, 2005, and that he received a letter from the Complainant dated November 4, 2005.

A summary of the documents requested by the Complainant as well as the Custodian’s response is listed in the table below:

Documents Responsive to Complainant’s September 16, 2005 and September 29, 2005 requests	Date Provided to Complainant	Custodian’s Reason for Nondisclosure, if any
Letter dated February 20, 2002 from Jerry Tague, Director of Facilities for the Monroe Township schools to Jim Morton, A.I.A., of MRM Architecture with enclosed wetland maps prepared by Tom Aufferorde of	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

EcolSciences, Inc.		
Letter dated February 6, 2002 from Mr. Tague to Mr. Paul authorizing investigation of proposed sites to determine the approximate extent of wetlands	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Letter dated February 6, 2006 from Mr. Paul to Mr. Tague setting forth proposal to provide environmental consulting services for four (4) properties	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Privileged and confidential notes dated February 5, 2002 prepared by Mr. Tague regarding new high school property investigation	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Letter dated February 4, 2002 from Mr. Paul to Mr. Tague regarding the evaluation of prospective high school sites	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Letter dated January 28, 2002 from Mr. Tague to Mr. Morton identifying block, lot, and acreage for two potential building sites	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Memo dated August 20, 2001 from Mr. Tague to Mr. Holliday regarding a future building site deemed unacceptable due to railroad tracks and wetlands	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Jerry Tague's letter of October 8, 2002 to Thomas Auffenorde	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
McCarter & English, Esqs. letter dated August 14, 2002	Complainant viewed on or about September 27, 2005	Attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

Jerry Tague's letter of August 7, 2002 to Gary Hall of McCarter & English	Complainant viewed on or about September 27, 2005	Attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Meeting notes dated July 31, 2002	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material as well as attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Telephone conversation log dated July 26, 2002 signed by Jerry Tague re: telephone conversation with Gary Hall, Esq.	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Jerry Tague's letter of July 19, 2002 to Jim Morton	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Thomas Auffenorde's letter of July 17, 2005 to Jerry Tague	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
USGS Site Location prepared by EcolSciences, Inc. for Block 14, Lots 12.01 and 12.02	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Photograph log for Block 14, Lots 12.01 and 12.02	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Letter dated July 16, 2002 from Jerry Tague to Gary Hall	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material as well as attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Letter dated July 11, 2002 from Jerry Tague to Thomas Auffenorde	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Letter dated May 3, 2002 from Thomas Auffenorde to	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or

Jerry Tague		deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
Letter dated July 10, 2002 from Gary T. Hall, Esq. to Jerry Tague together with Attorney's Affidavit and application forms	Complainant viewed on or about September 27, 2005	Attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
DEP letter dated March 5, 2003 to Thomas Auffenorde of EcolSciences, Inc.	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
Legal notice submitted by Kenneth L. Page, stapled to maps	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
Letter dated February 7, 2003 from Mr. Auffenorde to John King of DEP	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
Letter dated July 17, 2002 from EcolSciences, Inc. to Mark Fedorowycz to DEP re: Letter of Interpretation	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
Freshwater Wetlands Letter of Interpretation (LOI) Application Checklist and Fee Table	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
DEP Application Form (LURP #1)	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
Letter dated July 17, 2002 from Thomas Auffenorde of EcolSciences, Inc. to Ms. Sharon Doerfler, Clerk, with copies to various parties, including property owners within 200 feet	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
Letter dated April 30, 2002 from Robert Tucker to Daniel Brill of EcolSciences, Inc. forwarding certified list of property owners	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
Tax Map Sheet No. 26	Complainant viewed on or	Not Applicable

	about September 27, 2005; Complainant received copy on October 11, 2005	
Application for a Letter of Interpretation – Block 14, Lot 12	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Draft letter dated May 3, 2002 from Thomas Auffenorde to Mark Fedorowycz with enclosures, including draft letter to Sharon Doerfler, Clerk, re: Freshwater Wetlands Letter of Interpretation (LOI) Application Checklist and Fee Table, USGS Site Location, Block 14, Lot 12 prepared by EcolSciences, Inc and attachments, and photograph log	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Facsimile cover sheet from Jerry Tague to Gary Hall, Esq. (undated)	Complainant viewed on or about September 27, 2005	Attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Letter dated May 13, 2002 from Feist Engineering re: Topographic Mapping of Block 14, Lot 12	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Project meeting notes dated April 25, 2002	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material as well as attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Letter dated April 11, 2002 from Jerry Tague to Ken Paul of EcolSciences, Inc with proposal of April 12, 2002 signed by Mr. Tague on April 11, 2002	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material as well as attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Letter dated April 8, 2002 from James E. Morton to	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or

Dr. Ferrie re: Project #02103 with attachments		deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Letter dated March 18, 2002 from Jerry Tague to Jim Morton	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Telephone conversation log dated March 14, 2002 signed by Jerry Tague re: conversation with Mike Rogers	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Meeting notes dated March 13, 2002 with attached maps	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Letter dated March 12, 2002 from Jerry Tague to Thomas Auffenorde with attachments	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Letter dated March 12, 2002 from James E. Morton to Jerry Tague	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Letter from Jim Morton to Jerry Tague with maps (2 pages) attached	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Telephone conversation log dated March 1, 2002 signed by Jerry Tague re: Edward "Ned" Barclay	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Letter dated March 13, 2002 from EcolSciences, Inc. to Jerry Tague re: Block 14, Lots 10.02, 11.01, 11.02 and 12 with maps attached	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Letter dated February 22, 2002 from Jerry Tague to Thomas Auffenorde	Complainant viewed on or about September 27, 2005	Inter-agency or intra-agency advisory, consultative, or deliberative material

		pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
Letter dated May 23, 2002 from Mary Jean Guidette, County Superintendent of Schools to Dr. Ferrie	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
Letter dated May 16, 2002 to Dr. Mary Regina Guidette	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
3-page "Tentative List of Spaces with Capacity" revised May 22, 2002	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
Letter dated May 15, 2002 from Backes & Hill, Esqs. to Jerry Tague re: Lot 12-B, Block 14	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
Letter dated February 25, 2002 from Jerry Tague to E. Stanley Barclay. Attached to the file of this letter are two (2) pages of hand written notes	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable
Letter dated August 15, 2001 from Charlie Dipierro to Monroe Twp. Board of Education re: Block #30, Lot #7 & 5.05 with map attached	Complainant viewed on or about September 27, 2005; Complainant received copy on October 11, 2005	Not Applicable

May 5, 2006

Letter from GRC staff to Custodian’s Counsel. Staff requests that Counsel submit a legal certification signed by the Custodian indicating the status of the construction of the new high school.

May 10, 2006

Letter from Custodian’s Counsel with Custodian’s certification attached. The Custodian certifies that no construction has taken place for the new high school which is the subject of this complaint. He also certifies that the location for the high school consists of approximately 35 acres at the intersection of Perrineville Road and Schoolhouse Road.

July 11, 2006

Letter from Custodian’s Counsel to GRC staff. Counsel encloses a copy of the opinion on John Paff v. Perth Amboy City Council, Superior Court of New Jersey, Appellate Division, decided May 17, 2006. Counsel asserts that the Monroe Township

BOE relies upon the provision set forth in said opinion regarding attorney-client privilege.

October 23, 2006

Letter from GRC staff to Custodian's Counsel. Staff requests that Counsel provide a document index of the requested documents including a general nature description for each document as well as the legal explanation and citation for non-disclosure of said documents of any part thereof.

October 25, 2006

Certification of Custodian's Counsel. Counsel certifies that he has been authorized by the Superintendent of Schools and the Custodian of Records to offer to produce all of the requested documents to the Complainant, subject to the condition that she pay the standard copy fees and withdraw her complaint with the GRC.

October 30, 2006

E-mail from Complainant to Custodian's Counsel. The Complainant states that she does not accept Counsel's offer and would like the GRC to rule on this matter.

October 31, 2006

Letter from Custodian's Counsel to GRC staff with Custodian's certification attached. Counsel states that he has enclosed a list of the documents that the Custodian did not provide the Complainant along with copies of said documents. The Custodian certifies that he has authorized his legal counsel to submit the documents, which were not released to the Complainant, to the GRC so that the GRC may conduct an *in camera* review.

Analysis

Whether the Custodian unlawfully denied access to the records requested?

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ... The terms *shall not include inter-agency or intra-agency advisory, consultative, or deliberative material...* A government record *shall not include* the following information which is deemed to be confidential for the purposes of [OPRA]:

- *any record within the attorney-client privilege...*
- information which, if disclosed, would give *an advantage to competitors or bidders...*” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

The Complainant asserts submitting an OPRA request on June 10, 2004 for all documents and reports related to research on proposed high school locations. She states that the Custodian provided her with two (2) pages on June 17, 2004, with a charge of \$0.75 per page. The Complainant asserts submitting another OPRA request on August 26, 2005, for reports and correspondence on sites for the high school (first referendum) including EcolSciences, Inc. She states that on August 30, 2005, she received a response from the Custodian, in which he requested that the Complainant provide more specific information so that the appropriate documents could be provided.

On September 16, 2005, the Complainant states she submitted a third OPRA request seeking to view all documents, e-mails, reports, and studies examined for alternative locations for the new high school prior to April 14, 2003. She asserts that on September 27, 2005 she viewed a large volume of documents responsive to her request and flagged specific documents she wanted copied. She claims, however, that staff advised her that the copy machine was down and that she could receive said copies at a later date. The Complainant claims that staff later advised her, after she indicated she wanted copies of all the documents she viewed, that she needed to fill out another OPRA request for the documents she wanted copied and provide a \$60.00 deposit. The Complainant asserts doing so on September 29, 2005.

The Custodian certifies that on October 11, 2005, he provided the Complainant with copies of the records responsive which are releasable under OPRA. He certifies that any documents not provided are exempt from disclosure, as they represent inter-agency or intra-agency advisory, consultative, or deliberative material, as well as records within the attorney-client privilege which are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

The Complainant takes issue with the fact that on September 27, 2005, the Custodian allowed her to view a large number of records responsive to her request; however on October 11, 2005, he only provided her with a portion of those documents, claiming that the others were exempt pursuant to OPRA. She contends that the Custodian waived any privileged exemption when he allowed her to view the documents. The Custodian’s Counsel asserts that pursuant to Rule 5:30 of the New Jersey Rules of Evidence and N.J.S.A. 2A:84A-29, a privilege may be waived only when the holder of the privilege has “without coercion and with knowledge of his right or privilege made disclosure of any part of the privileged matter.” Additionally, Counsel contends that the Custodian was unaware that some of the responsive records were exempt from disclosure because he did not submit the Complainant’s September 16, 2005 request for attorney review, which is why he originally allowed the Complainant to view all the responsive records.

Furthermore, the Custodian certifies that of the records responsive to the Complainant’s September 16, 2005 and September 29, 2005 requests, the following

documents were not provided, as they represent inter-agency or intra-agency advisory, consultative, or deliberative material, as well as records within the attorney-client privilege which are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1:

Documents Responsive to Complainant's September 16, 2005 and September 29, 2005 requests	Custodian's Reason for Nondisclosure, if any	<i>In Camera</i> Inspection Required
Letter dated February 20, 2002 from Jerry Tague, Director of Facilities for the Monroe Township schools to Jim Morton, A.I.A., of MRM Architecture with enclosed wetland maps prepared by Tom Auffenorde of EcolSciences, Inc.	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .	yes
Letter dated February 6, 2002 from Mr. Tague to Mr. Paul authorizing investigation of proposed sites to determine the approximate extent of wetlands	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .	yes
Letter dated February 6, 2006 from Mr. Paul to Mr. Tague setting forth proposal to provide environmental consulting services for four (4) properties	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .	yes
Privileged and confidential notes dated February 5, 2002 prepared by Mr. Tague regarding new high school property investigation	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .	yes
Letter dated February 4, 2002 from Mr. Paul to Mr. Tague regarding the evaluation of prospective high school sites	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .	yes
Letter dated January 28, 2002 from Mr. Tague to Mr. Morton identifying block, lot, and acreage for two potential building sites	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .	yes
Memo dated August 20, 2001 from Mr. Tague to Mr. Holliday regarding a future building site deemed unacceptable due to railroad tracks and wetlands	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .	yes
Jerry Tague's letter of October 8, 2002 to Thomas Auffenorde	Inter-agency or intra-agency advisory, consultative, or	yes

	deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	
McCarter & English, Esqs. letter dated August 14, 2002	Attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Jerry Tague's letter of August 7, 2002 to Gary Hall of McCarter & English	Attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Meeting notes dated July 31, 2002	Inter-agency or intra-agency advisory, consultative, or deliberative material as well as attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Telephone conversation log dated July 26, 2002 signed by Jerry Tague re: telephone conversation with Gary Hall, Esq.	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Jerry Tague's letter of July 19, 2002 to Jim Morton	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Thomas Auffenorde's letter of July 17, 2005 to Jerry Tague	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
USGS Site Location prepared by EcolSciences, Inc. for Block 14, Lots 12.01 and 12.02	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Photograph log for Block 14, Lots 12.01 and 12.02	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter dated July 16, 2002 from Jerry Tague to Gary Hall	Inter-agency or intra-agency advisory, consultative, or deliberative material as well as attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter dated July 11, 2002 from Jerry Tague to Thomas Auffenorde	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter dated May 3, 2002 from Thomas Auffenorde to Jerry Tague	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter dated July 10, 2002 from Gary T. Hall, Esq. to Jerry Tague	Attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes

together with Attorney's Affidavit and application forms		
Application for a Letter of Interpretation – Block 14, Lot 12	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Draft letter dated May 3, 2002 from Thomas Auffenorde to Mark Fedorowycz with enclosures, including draft letter to Sharon Doerfler, Clerk, re: Freshwater Wetlands Letter of Interpretation (LOI) Application Checklist and Fee Table, USGS Site Location, Block 14, Lot 12 prepared by EcolSciences, Inc and attachments, and photograph log	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Facsimile cover sheet from Jerry Tague to Gary Hall, Esq. (undated)	Attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter dated May 13, 2002 from Feist Engineering re: Topographic Mapping of Block 14, Lot 12	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Project meeting notes dated April 25, 2002	Inter-agency or intra-agency advisory, consultative, or deliberative material as well as attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter dated April 11, 2002 from Jerry Tague to Ken Paul of EcolSciences, Inc with proposal of April 12, 2002 signed by Mr. Tague on April 11, 2002	Inter-agency or intra-agency advisory, consultative, or deliberative material as well as attorney-client privilege pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter dated April 8, 2002 from James E. Morton to Dr. Ferrie re: Project #02103 with attachments	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter dated March 18, 2002 from Jerry Tague to Jim Morton	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Telephone conversation log dated March 14, 2002 signed by Jerry Tague re: conversation with Mike Rogers	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes

Meeting notes dated March 13, 2002 with attached maps	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter dated March 12, 2002 from Jerry Tague to Thomas Auffenorde with attachments	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter dated March 12, 2002 from James E. Morton to Jerry Tague	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter from Jim Morton to Jerry Tague with maps (2 pages) attached	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Telephone conversation log dated March 1, 2002 signed by Jerry Tague re: Edward “Ned” Barclay	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter dated March 13, 2002 from EcolSciences, Inc. to Jerry Tague re: Block 14, Lots 10.02, 11.01, 11.02 and 12 with maps attached	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes
Letter dated February 22, 2002 from Jerry Tague to Thomas Auffenorde	Inter-agency or intra-agency advisory, consultative, or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>	yes

Additionally, the Custodian certifies that all other records which are responsive and not exempt, as previously explained, were made available to the Complainant on October 11, 2005. Furthermore, in a certification dated October 25, 2006, Counsel certifies that with the authority of the Superintendent of Schools and the Custodian of Records, he is offering to release all of the requested documents to the Complainant, provided that she pay the standard copy fees and withdraw her complaint with the GRC. The Complainant asserts that the GRC should rule on this matter and states that she does not accept Counsel’s offer.

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. 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 excludes from the definition of a government record “inter-agency or intra-agency advisory, consultative or deliberative material (ACD).” N.J.S.A. 47:1A-1.1.

It is evident that this phrase is intended to exclude, from the definition of a government record, the types of documents that are the subject of the “deliberative process privilege.” That privilege has long been recognized by federal courts. *See Kaiser Alum. & Chem. Corp. v. United States*, 157 F. Supp. 939 (1958); *NLRB v. Sears*,

Roebuck, & Co., 421 U.S. 132, 150 (1975). It has also been codified in the federal Freedom of Information Act (“FOIA”). 5 U.S.C. §552(b)(5). Most recently, the New Jersey Supreme Court adopted the privilege. In re Liquidation of Integrity Insurance Co., 165 N.J. 75 (2000).

The judiciary set forth the legal standard for applying the deliberative process privilege as follows:

- The initial burden falls on the government agency to establish that matters are both *pre-decisional* and *deliberative*.
 - a. Pre-decisional means that the records were generated before an agency adopted or reached its decision or policy.
 - b. Deliberative means that the record contains opinions, recommendations, or advice about agency policies or decisions.
 - c. Deliberative materials do not include purely factual materials.
 - d. Where factual information is contained in a record that is deliberative, such information must be produced so long as the factual material can be separated from its deliberative context.
 - e. The exemption covers recommendations, draft documents, proposals, suggestions, and other subjective documents *which reflect the personal opinions of the writer rather than the policy of the agency*.
 - f. Documents which are protected by the privilege are those which *would inaccurately reflect or prematurely disclose the views of the agency, suggesting an agency position that which is only a personal position*.
 - g. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves *whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communications within the agency*.

In this case, the Custodian certifies that several of the requested documents fall into this category, as the records relate to pre-decisional information. The Custodian asserts that the records classified as ACD are pre-decisional, since the Custodian certifies that construction has not yet begun on the new high school. Additionally, as the requested records relate to proposed school sites, releasing said documents would provide an advantage to competitors and bidders pursuant to OPRA. While the Custodian’s reasons for denying access to a portion of the requested documents are compelling, there is insufficient evidence to determine if the documents, or portions, thereof, are exempt from access. Therefore, the Council should perform an *in camera* inspection of the following requested records:

1. Letter dated February 20, 2002 from Jerry Tague, Director of Facilities for the Monroe Township schools to Jim Morton, A.I.A., of MRM Architecture with enclosed wetland maps prepared by Tom Auffenorde of EcolSciences, Inc.
2. Letter dated February 6, 2002 from Mr. Tague to Mr. Paul authorizing investigation of proposed sites to determine the approximate extent of wetlands
3. Letter dated February 6, 2006 from Mr. Paul to Mr. Tague setting forth proposal to provide environmental consulting services for four (4) properties
4. Privileged and confidential notes dated February 5, 2002 prepared by Mr. Tague regarding new high school property investigation
5. Letter dated February 4, 2002 from Mr. Paul to Mr. Tague regarding the evaluation of prospective high school sites
6. Letter dated January 28, 2002 from Mr. Tague to Mr. Morton identifying block, lot, and acreage for two potential building sites
7. Memo dated August 20, 2001 from Mr. Tague to Mr. Holliday regarding a future building site deemed unacceptable due to railroad tracks and wetlands
8. Jerry Tague's letter of October 8, 2002 to Thomas Auffenorde
9. McCarter & English, Esqs. letter dated August 14, 2002
10. Jerry Tague's letter of August 7, 2002 to Gary Hall of McCarter & English
11. Meeting notes dated July 31, 2002
12. Telephone conversation log dated July 26, 2002 signed by Jerry Tague re: telephone conversation with Gary Hall, Esq.
13. Jerry Tague's letter of July 19, 2002 to Jim Morton
14. Thomas Auffenorde's letter of July 17, 2005 to Jerry Tague
15. USGS Site Location prepared by EcolSciences, Inc. for Block 14, Lots 12.01 and 12.02
16. Photograph log for Block 14, Lots 12.01 and 12.02
17. Letter dated July 16, 2002 from Jerry Tague to Gary Hall
18. Letter dated July 11, 2002 from Jerry Tague to Thomas Auffenorde
19. Letter dated May 3, 2002 from Thomas Auffenorde to Jerry Tague
20. Letter dated July 10, 2002 from Gary T. Hall, Esq. to Jerry Tague together with Attorney's Affidavit and application forms
21. Application for a Letter of Interpretation – Block 14, Lot 12
22. Draft letter dated May 3, 2002 from Thomas Auffenorde to Mark Fedorowycz with enclosures, including draft letter to Sharon Doerfler, Clerk, re: Freshwater Wetlands Letter of Interpretation (LOI) Application Checklist and Fee Table, USGS Site Location, Block 14, Lot 12 prepared by EcolSciences, Inc and attachments, and photograph log
23. Facsimile cover sheet from Jerry Tague to Gary Hall, Esq. (undated)
24. Letter dated May 13, 2002 from Feist Engineering re: Topographic Mapping of Block 14, Lot 12
25. Project meeting notes dated April 25, 2002
26. Letter dated April 11, 2002 from Jerry Tague to Ken Paul of EcolSciences, Inc with proposal of April 12, 2002 signed by Mr. Tague on April 11, 2002
27. Letter dated April 8, 2002 from James E. Morton to Dr. Ferrie re: Project #02103 with attachments
28. Letter dated March 18, 2002 from Jerry Tague to Jim Morton

29. Telephone conversation log dated March 14, 2002 signed by Jerry Tague re: conversation with Mike Rogers
30. Meeting notes dated March 13, 2002 with attached maps
31. Letter dated March 12, 2002 from Jerry Tague to Thomas Auffenorde with attachments
32. Letter dated March 12, 2002 from James E. Morton to Jerry Tague
33. Letter from Jim Morton to Jerry Tague with maps (2 pages) attached
34. Telephone conversation log dated March 1, 2002 signed by Jerry Tague re: Edward "Ned" Barclay
35. Letter dated March 13, 2002 from EcolSciences, Inc. to Jerry Tague re: Block 14, Lots 10.02, 11.01, 11.02 and 12 with maps attached
36. Letter dated February 22, 2002 from Jerry Tague to Thomas Auffenorde

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that while the Custodian's reasons for denying access to a portion of the requested documents are compelling, there is insufficient evidence to determine if the documents, or portions, thereof, are exempt from access. Therefore, the Council should perform an *in camera* inspection of the following requested records:

1. Letter dated February 20, 2002 from Jerry Tague, Director of Facilities for the Monroe Township schools to Jim Morton, A.I.A., of MRM Architecture with enclosed wetland maps prepared by Tom Auffenorde of EcolSciences, Inc.
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36. Letter dated February 22, 2002 from Jerry Tague to Thomas Auffenorde

Prepared By:

Dara Lownie
Case Manager

Approved By:

Catherine Starghill, Esq.
Executive Director

December 7, 2006