



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**LORI GRIFA**  
*Commissioner*

**FINAL DECISION**

**November 30, 2010 Government Records Council Meeting**

Donald Baldwin  
Complainant

Complaint No. 2006-165

v.

Township of Readington (Hunterdon)  
Custodian of Record

At the November 30, 2010 public meeting, the Government Records Council ("Council") considered the November 23, 2010 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, renders a final decision dismissing this complaint because the Complainant withdrew the fee application pending in the Office of Administrative Law by correspondence dated October 21, 2010.

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 30<sup>th</sup> Day of November, 2010

Robin Berg Tabakin, Chair  
Government Records Council

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

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: December 3, 2010**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
November 30, 2010 Council Meeting**

**Donald Baldwin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2006-165**

**v.**

**Township of Readington (Hunterdon)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

- 1) All invoices, paid or unpaid, to Readington Township from CN Communications, International, Inc., (“CN Communications”) for 2005 and 2006, along with the explanation of services rendered. Included in that should be the invoices/expenses that were channeled through the law firm of Connell Foley prior to Readington’s direct retention of CN Communications by separate ordinance.
- 2) Any and all correspondence between Readington Township personnel, at any level, elected or otherwise, and CN Communications, including but not limited to contracts, letters, faxes, e-mails, or memos for 2005 and 2006.

**Request Made:** August 7, 2006

**Response Made:** August 14, 2006

**Custodian:** Vita Mekovetz

**GRC Complaint Filed:** September 7, 2006

**Background**

**April 8, 2010**

At the April 8, 2010 public meeting, the Government Records Council (“Council”) considered the April 1, 2010 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. Based on the Council’s recent changed position on whether custodians’ violations of OPRA are knowing and willful, this Custodian’s specific request for reconsideration is granted and the September 30, 2009 Interim Order is amended (by this Order) to strike the last sentence in Conclusions and Recommendation #3 on page 40 of said Order which states, “However, the Custodian’s actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.”

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<sup>1</sup> Represented by William L. Ryan, Esq., of Archer & Greiner (Haddonfield, NJ).

<sup>2</sup> Represented by Sharon A. Dragan, Esq., of Ballard & Dragan (Flemington, NJ).

2. The Custodian's request for reconsideration is granted with regard to the inaccurate reference made to the Custodian's Counsel instead of the Complainant's Counsel on pages 33 and 36 and the September 30, 2009 Interim Order is so amended by this Order.
3. Pursuant to Teeters v. DYFS, 387 N.J.Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6 and Teeters, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

**April 12, 2010**

Council's Interim Decision distributed to the parties.

**June 25, 2010**

Complaint transmitted to the Office of Administrative Law ("OAL").

**October 18, 2010**

Letter from the Custodian's Counsel to the Complainant's Counsel. The Custodian's Counsel informs the Complainant's Counsel that the Custodian is forwarding to the Complainant's Counsel a check and purchase order in satisfaction of the legal fees requested by the Complainant's Counsel and in settlement of the instant complaint.

**October 21, 2010**

Letter from the Complainant's Counsel to the Administrative Law Judge ("ALJ"). The Complainant's Counsel informs the ALJ that the Complainant is withdrawing the fee application pending in OAL because the parties have settled the attorney fee issue.

**Analysis**

No analysis required.

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council render a final decision dismissing this complaint because the Complainant withdrew the fee application pending in the Office of Administrative Law by correspondence dated October 21, 2010.

Prepared By: John E. Stewart, Esq.

Approved By: Catherine Starghill, Esq.  
Executive Director

November 23, 2010



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**LORI GRIFA**  
*Acting Commissioner*

**INTERIM ORDER**

**April 8, 2010 Government Records Council Meeting**

Donald Baldwin  
Complainant

Complaint No. 2006-165

v.

Township of Readington  
Custodian of Record

At the April 8, 2010 public meeting, the Government Records Council ("Council") considered the April 1, 2010 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. Based on the Council's recent changed position on whether custodians' violations of OPRA are knowing and willful, this Custodian's specific request for reconsideration is granted and the September 30, 2009 Interim Order is amended (by this Order) to strike the last sentence in Conclusions and Recommendation #3 on page 40 of said Order which states, "However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law."
2. The Custodian's request for reconsideration is granted with regard to the inaccurate reference made to the Custodian's Counsel instead of the Complainant's Counsel on pages 33 and 36 and the September 30, 2009 Interim Order is so amended by this Order.
3. Pursuant to Teeters v. DYFS, 387 N.J.Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6 and Teeters, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Interim Order Rendered by the  
Government Records Council  
On The 8<sup>th</sup> Day of April, 2010

Robin Berg Tabakin, Chair  
Government Records Council

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

Harlynn A. Lack, Secretary  
Government Records Council

**Decision Distribution Date: April 12, 2010**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
April 8, 2010 Council Meeting**

**Donald Baldwin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2006-165**

**v.**

**Township of Readington<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

- 1) All invoices, paid or unpaid, to Readington Township from CN Communications, International, Inc., (“CN Communications”) for 2005 and 2006, along with the explanation of services rendered. Included in that should be the invoices/expenses that were channeled through the law firm of Connell Foley prior to Readington’s direct retention of CN Communications by separate ordinance.
- 2) Any and all correspondence between Readington Township personnel, at any level, elected or otherwise, and CN Communications, including but not limited to contracts, letters, faxes, e-mails, or memos for 2005 and 2006.

**Request Made:** August 7, 2006

**Response Made:** August 14, 2006

**Custodian:** Vita Mekovetz

**GRC Complaint Filed:** September 7, 2006

**Background**

**September 30, 2009**

Government Records Council’s (“Council”) Interim Order. At its September 30, 2009 public meeting, the Council considered the September 23, 2009 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. Because the Complainant has failed to establish in his request for reconsideration of the Council’s October 29, 2008 Interim Order that 1) the GRC’s decision is based upon a “palpably incorrect or irrational basis” or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and rendered an arbitrary, capricious or unreasonable decision, said request for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div.

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<sup>1</sup> Represented by William L. Ryan, Esq., of Archer & Greiner (Haddonfield, NJ).

<sup>2</sup> Represented by Sharon A. Dragan, Esq., of Ballard & Dragan (Flemington, NJ).

1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

2. Because the Custodian certified that she reviewed all of the records vis-à-vis the *In Camera* Table in the Council's October 29, 2008 Interim Order, made all necessary redactions and provided copies of the disclosable records to the Complainant on November 12, 2008, which is within the time period set forth in the Interim Order as extended, and because the Custodian subsequently provided a timely certification to the GRC, the Custodian has complied with the Council's October 29, 2008 Interim Order.
3. Although the Custodian failed to respond in writing to the Complainant's entire OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, the Custodian did comply in a timely manner to the Council's April 25, 2007 Interim Order directing the Custodian to provide records to the GRC for *in camera* inspection. The Custodian also complied with the Council's October 29, 2008 Interim Order in a timely manner disclosing a large quantity of redacted and unredacted records to the Complainant. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.
4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6 and Teeters. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

#### **October 6, 2009**

Council's Interim Order distributed to the parties.

#### **October 19, 2009**

Custodian's Request for Reconsideration of the Council's Interim Order. The Custodian's stated reasons for her request for reconsideration are: (1) mistake and (2) extraordinary circumstances. Specifically, the Custodian asks the Council to reconsider the last portion of Conclusion and Recommendation #3 (regarding whether the Custodian's violations of OPRA were knowing and willful and subject to the civil penalty of \$1,000), which appears to be a secondary finding that the Custodian's actions were "negligent and heedless" when OPRA only requires a determination of whether or not the Custodian's actions were "knowing and willful." In addition, the Custodian asks

the Council to change the two erroneous references in the Interim Order from “Custodian’s Counsel” to “Complainant’s Counsel” on page 33 and on page 36. The Custodian included a letter brief in support of the request for reconsideration.

#### **October 29, 2009**

Complainant’s opposition to the Custodian’s request for reconsideration. The Complainant included a letter brief in support of his opposition based on the Custodian’s asserted failure to satisfy the standard required for a motion for reconsideration.

#### **January 4, 2010**

Letter from the Municipal Clerk’s Association of New Jersey (MCANJ) to the GRC. The MCANJ takes issue with the GRC’s conclusion in its September 30, 2009 Interim Order in this matter. Specifically, the MCANJ objects to the GRC imposing a lesser standard of “negligent and heedless” when it has no statutory authority to do.

### **Analysis**

#### **Whether the Custodian has met the required standard for reconsideration of the Council’s September 30, 2009 Interim Order?**

Pursuant to *N.J.A.C. 5:105-2.10*, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. *N.J.A.C. 5:105-2.10(a) – (e)*.

Applicable case law holds that:

“[a] party should not seek reconsideration merely based upon dissatisfaction with a decision.” *D’Atria v. D’Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g., Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. *D’Atria, supra*, 242 N.J. Super. at 401. ‘Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.’ *Ibid.*” In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).



In support of her motion for reconsideration, the Custodian submitted a letter brief outlining why the Council made a mistake in finding that while the Custodian's actions are not knowing and willful, her actions appear negligent and heedless. Because the Council has recently officially changed its position with regard to this exact language for all decisions going forward, there is no need to analyze the Custodian's arguments. The Council has determined that it is not necessary to further judge a custodian's violations of OPRA beyond the knowing and willful standard. While the Council notes that it never found a custodian to be negligent and heedless, it did make note that a custodian's actions violating OPRA "appear" negligent and heedless in many instances. Thus, based on the Council's recently changed position on whether custodians' violations of OPRA are knowing and willful, this Custodian's specific request for reconsideration is granted and the September 30, 2009 Interim Order is amended (by this Order) to strike the last sentence in the Conclusions and Recommendation #3 on page 40 of said Order which states, "However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law."

Further, the Custodian's request for reconsideration is granted with regard to the inaccurate reference made to the Custodian's Counsel instead of the Complainant's Counsel on pages 33 and 36 and the September 30, 2009 Interim Order is so amended by this Order.

The other Conclusions and Recommendations remain unchanged. Conclusions and Recommendations #4 is repeated in this supplemental Interim Order to restate the next procedural stage of this complaint. As such, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Based on the Council's recent changed position on whether custodians' violations of OPRA are knowing and willful, this Custodian's specific request for reconsideration is granted and the September 30, 2009 Interim Order is amended (by this Order) to strike the last sentence in Conclusions and Recommendation #3 on page 40 of said Order which states, "However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law."
2. The Custodian's request for reconsideration is granted with regard to the inaccurate reference made to the Custodian's Counsel instead of the Complainant's Counsel on pages 33 and 36 and the September 30, 2009 Interim Order is so amended by this Order.
3. Pursuant to Teeters v. DYFS, 387 N.J.Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432.

Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6 and Teeters, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Prepared and  
Approved By: Catherine Starghill, Esq.  
Executive Director

April 1, 2010



**State of New Jersey**  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

JON S. CORZINE  
Governor

CHARLES A. RICHMAN  
Acting Commissioner

**INTERIM ORDER**

**September 30, 2009 Government Records Council Meeting**

Donald Baldwin  
Complainant

Complaint No. 2006-165

v.

Township of Readington  
Custodian of Record

At the September 30, 2009 public meeting, the Government Records Council ("Council") considered the September 23, 2009 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. Because the Complainant has failed to establish in his request for reconsideration of the Council's October 29, 2008 Interim Order that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and rendered an arbitrary, capricious or unreasonable decision, said request for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
2. Because the Custodian certified that she reviewed all of the records vis-à-vis the *In Camera* Table in the Council's October 29, 2008 Interim Order, made all necessary redactions and provided copies of the disclosable records to the Complainant on November 12, 2008, which is within the time period set forth in the Interim Order as extended, and because the Custodian subsequently provided a timely certification to the GRC, the Custodian has complied with the Council's October 29, 2008 Interim Order.

3. Although the Custodian failed to respond in writing to the Complainant's entire OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, the Custodian did comply in a timely manner to the Council's April 25, 2007 Interim Order directing the Custodian to provide records to the GRC for *in camera* inspection. The Custodian also complied with the Council's October 29, 2008 Interim Order in a timely manner disclosing a large quantity of redacted and unredacted records to the Complainant. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.
4. Pursuant to Teeters v. DYFS, 387 N.J.Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6 and Teeters. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Interim Order Rendered by the  
Government Records Council  
On The 30<sup>th</sup> Day of September, 2009

Robin Berg Tabakin, Chair  
Government Records Council

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

Janice L. Kovach, Secretary  
Government Records Council

**Decision Distribution Date: October 6, 2009**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
September 30, 2009 Council Meeting**

**Donald Baldwin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2006-165**

**v.**

**Township of Readington<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

- 1) All invoices, paid or unpaid, to Readington Township from CN Communications, International, Inc., (“CN Communications”) for 2005 and 2006, along with the explanation of services rendered. Included in that should be the invoices/expenses that were channeled through the law firm of Connell Foley prior to Readington’s direct retention of CN Communications by separate ordinance.
- 2) Any and all correspondence between Readington Township personnel, at any level, elected or otherwise, and CN Communications, including but not limited to contracts, letters, faxes, e-mails, or memos for 2005 and 2006.

**Request Made:** August 7, 2006

**Response Made:** August 14, 2006

**Custodian:** Vita Mekovetz

**GRC Complaint Filed:** September 7, 2006

**Background**

**October 29, 2008**

At the October 29, 2008 public meeting, the Government Records Council (“Council”) considered the October 22, 2008 *In Camera* Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. By a majority vote, the Council adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian has complied with the Council’s April 25, 2007 Interim Order by providing the Council with all records set forth in Paragraph 3 of the Order within five (5) business days of receiving the Council’s Order, as extended.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the table below within five (5) business days from receipt of this**

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<sup>1</sup> Represented by William L. Ryan, Esq., of Archer & Greiner (Haddonfield, NJ).

<sup>2</sup> Represented by Sharon A. Dragan, Esq., of Ballard & Dragan (Flemington, NJ).

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

<b>Record Number</b>	<b>Record Name/Date</b>	<b>Description of Record</b>	<b>Custodian's Explanation/ Citation for Non-disclosure or Redactions</b>	<b>Findings of the <i>In Camera</i> Examination</b>
2	E-mail from Jonathan Funke, CN Communications to Julia Allen, Township Committee member ("Allen"); Frank Gatti, Township Official ("Gatti"); Tom Auriemma, Township Committee member ("Auriemma"); Jay Rhatican, special counsel ("Rhatican"); Joseph Murphy, special counsel ("Murphy"); Anthony Cicatiello, CN Communications consultant ("Cicatiello"); and the Custodian dated 2/7/06 at 5:32 pm.	Contains opinions regarding a record identified in the document index as a "draft letter."	Exempt as ACD - entire document consists of opinions on draft letter, strategy.	Redact: The second and third sentences in the first paragraph. <sup>3</sup> The second paragraph. The second sentence in the third paragraph. The second sentence in the fourth paragraph. The fifth paragraph. This is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.

<sup>3</sup> Any group of words set off by indentation, bullets, numbering, extra space or a similar separation device is considered a separate paragraph for *in camera* examination purposes. The salutation and closing are not considered paragraphs.

2a	E-mail from Allen to Gatti, Auriemma, Cicatiello, Rhatican, Funke, Murphy and the Custodian dated 2/7/06 at 5:13 pm.	Contains query.	Exempt as ACD – poses question with suggestion and opinion.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
3a	Same record as #2.	Same description as #2.	Same explanation/citation for non-disclosure as #2.	Same finding as #2.
3b	Same record as #2a.	Same description as #2a.	Same explanation/citation for non-disclosure as #2a.	Same finding as #2a.
4b	Same record as #2.	Same description as #2.	Same explanation/citation for non-disclosure as #2.	Same finding as #2.
4c	Same record as #2a.	Same description as #2a.	Same explanation/citation for non-disclosure as #2a.	Same finding as #2a.
5c	Same record as #2.	Same description as #2.	Same explanation/citation for non-disclosure as #2.	Same finding as #2.
5d	Same record as #2a.	Same description as #2a.	Same explanation/citation for non-disclosure as #2a.	Same finding as #2a.
6	E-mail from Funke to the Custodian dated 2/8/06 at 4:48 pm.	Contains opinion and recommendations.	Exempt as ACD – contains opinion, discussion, seeks direction.	Redact the line after “Subject:” Disclose first paragraph [five ( 5) words] and redact balance of record as ACD material exempt

				from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
7d	Same record as #2.	Same description as #2.	Same explanation/citation for non-disclosure as #2.	Same finding as #2.
7e	Same record as #2a.	Same description as #2a.	Same explanation/citation for non-disclosure as #2a.	Same finding as #2a.
8	E-mail from Funke to Allen, Gatti, Auriemma, Cicatiello, Rhatican and the Custodian dated 2/9/06 at 4:34 pm.	Contains opinion and statements.	Exempt as ACD - contains opinions.	Redact second sentence of first paragraph as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
9	E-mail from Allen to Gatti, Auriemma, Rhatican, Funke, and the Custodian dated 2/7/06 at 5:13 pm.	Contains statements.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
10	E-mail from Funke to Allen, Gatti, Auriemma, Cicatiello, Rhatican and the Custodian dated 2/9/06 at 5:15 pm.	Contains opinions and recommendations.	Exempt as ACD.	Redact paragraph beginning with "Basically" and paragraph beginning with "Nothing" (middle two paragraphs) as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
10a	Same record as #9.	Same description as	Same explanation/	Same finding as #9.



		#9.	citation for non-disclosure as #9.	
10b	Record identified in the document index as "Attachment to 10a."	Record that was attached to document index Item #10a.	Exempt as ACD – draft for review.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
11	E-mail from the Custodian to Funke, Allen, Gatti, Auriemma, Cicatiello, and Rhatican dated 2/9/06 at 5:53 pm.	Contains inquiry and statements.	Exempt as ACD – seeks direction.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD. If the cell phone is personal property, the phone number may be redacted pursuant to the provisions of <u>N.J.S.A. 47:1A-1.1</u> .
11a	Same record as #10.	Same description as #10.	Same explanation/ citation for non-disclosure as #10.	Same finding as #10.
11b	Same record as #9.	Same description as #9.	Same explanation/ citation for non-disclosure as #9.	Same finding as #9.
12	E-mail from Funke to Allen, Gatti, Auriemma, Cicatiello, Rhatican and the Custodian dated 2/10/06 at 3:28 pm.	Contains statements and seeks cooperation.	Exempt as ACD – seeks direction.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.

12a	Record identified in the document index as "Attachment to 10a."	Record that was attached to document index Item #10a.	Exempt as ACD – draft for review.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
15	E-mail from Allen to Gatti, Auriemma, Funke, Gerald Shamey, Mayor ("Shamey") and the Custodian dated 2/13/06 at 1:18 pm.	Contains opinions and recommendations.	Exempt as ACD.	Redact sentence beginning with "First Para." and sentence beginning with "second para." as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
16	E-mail from Funke to the Custodian dated 2/27/06 at 12:29 pm.	Transmittal forwarding attachment.	Exempt as ACD – advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
16a	Record identified in the document index as "Draft Letter."	Record that was attached to document index Item #16.	Exempt as ACD – draft. Custodian also notes that this letter was made available to the public immediately.	Disclose – not ACD material. Because the Custodian certifies that the letter was immediately released to the public, it is the final version and no longer a draft; therefore the record shall be disclosed.
18	Record identified in the document index as "FAQ."	FAQ	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to

				<u>N.J.S.A. 47:1A-1.1.</u>
19	E-mail from Funke to Allen, Gatti, Shamey, Auriemma, Cicatiello, Rhatican, Murphy, Vanessa Dube, CN Communications consultant ("Dube"); Roger Staib, CN Communications consultant ("Staib"); Rich Golaszewski, GRA, Inc., outside party ("Golaszewski") and the Custodian dated 4/11/06 at 12:34 pm.	Transmittal forwarding attachment. Contains advice.	Exempt as ACD – contains opinion on draft position paper.	Redact everything in the second sentence of the first paragraph between the words "on the" and "but this" as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
20	E-mail from Funke to Allen, Gatti, Shamey, Auriemma, Cicatiello, Rhatican, Murphy, Dube, Staib, Golaszewski, and the Custodian dated 4/10/06 at 5:05 pm.	Transmittal forwarding attachment.	Exempt as ACD – requests opinion/advice on draft position paper.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
20a	Document identified in the document index as "FAQ."	Record that was attached to document index Item #20.	Exempt as ACD.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

23a	Document identified in the document index as "Meeting schedule."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
24	E-mail from Cicatiello to Funke, Allen, Gatti, Shamey, Auriemma, Rhatican, Murphy, Dube, Staib, and the Custodian dated 4/10/06 at 5:05 pm.	Contains statements and seeks cooperation.	Exempt as ACD – seeks advice on draft document.	Redact last sentence in the only full paragraph. as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
24a	Document identified in the document index as "position letter."	Record that was attached to document index Item #24.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
24b	Document identified in the document index as "suggested meeting dates."	Record that was attached to document index Item #24.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
25a	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
25b	Record identified in the document index as "Fed/State Role."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
26a	Record identified in the	Record attached to a	Exempt as ACD – draft	Draft document - ACD material

	document index as "Schedule of Meetings."	disclosed e-mail.	document.	exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
27a	Record identified in the document index as "mayor letter."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
27b	Record identified in the document index as "Schedule of Meetings."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
31	E-mail from Cicatiello to Royal Printing Company and the Custodian dated 4/19/06 at 2:22 pm.	Transmittal contains statement.	Not responsive to the Complainant's request because it is not between CN Communications and Township personnel. Also, exempt as ACD.	Record is responsive to the Complainant's request because the Custodian is a Township official.  Redact words in quotation marks as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
33a	Record identified in the document index as "FAQ."	Record attached to a disclosed e-mail.	Exempt as ACD: pre-decisional.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
34a	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to

				<u>N.J.S.A. 47:1A-1.1.</u>
35	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
36	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
37a	Record identified in the document index as "ballot question."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
38	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41	E-mail from Staib to Dube, Cicatiello and Funke dated 5/1/06 at 7:06 am.	Contains statements and opinions.	Not responsive to the Complainant's request because it is between CN Communication consultants. Also, exempt as ACD.	Record is not responsive to the Complainant's request; therefore the Custodian lawfully denied access.
41a	Record identified in the document index as "Technical Note."	Record that was attached to document index Item #41.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

41b	Record identified in the document index as "FAQ."	Record that was attached to document index Item #41.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41c	Record identified in the document index as "Transcript."	Record that was attached to document index Item #41.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41d	Record identified in the document index as "Fed/State Role."	Record that was attached to document index Item #41.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41e	Record identified in the document index as "Meeting Schedule."	Record that was attached to document index Item #41.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41f	Record identified in the document index as "Technical Note."	Record that was attached to document index Item #41.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
44b	Record identified in the document index as "Attachment to 44a."	Record that was attached to a disclosed e-mail.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

45a	Record identified in the document index as “proposed master plan cover.”	Record that was attached to a disclosed e-mail.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
45b	Record identified in the document index as “graphic.”	Record that was attached to a disclosed e-mail.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
47	E-mail from Staib to the Custodian dated 5/2/06 at 12:50 pm.	Contains recommendations, statements and opinions.	Exempt as ACD – contains advice, opinions, recommendations.	Redact the line after “Subject:” Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> , except for the last paragraph.
50	E-mail from Staib to the Custodian dated 5/2/06 at 1:30 pm.	Contains advice.	Exempt as ACD – requests advice, opinion, recommendation.	Redact everything within quotation marks in the second sentence and redact the third sentence in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of the record.
50b	E-mail from Staib to the Custodian dated 5/2/06 at	Contains recommendations, statements	Exempt as ACD – contains suggestions and recommenda-	Redact everything in the body of the correspondence as ACD material



	12:50 pm.	and opinions.	tions.	exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> , except for the last paragraph. Disclose balance of record.
52	E-mail from Staib to the Custodian dated 5/2/06 at 1:53 pm.	Contains recommendations.	Exempt as ACD – contains advice, opinions, recommendations.	Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
52b	E-mail from Staib to the Custodian dated 5/2/06 at 1:30 pm.	Contains advice.	Exempt as ACD – requests advice, opinion, recommendation.	Redact everything within quotation marks in the second sentence and redact the third sentence in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of the record.
52d	E-mail from Staib to the Custodian dated 5/2/06 at 12:50 pm.	Contains recommendations, statements and opinions.	Exempt as ACD – contains advice, opinions, recommendations.	Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> , except for the last paragraph. Disclose balance of record.
54b	E-mail from Staib to the	Contains recommenda-	Exempt as ACD – contains	Redact everything in the body of the

	Custodian dated 5/2/06 at 1:53 pm.	tions.	advice, opinions, recommendations.	correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
54d	E-mail from Staib to the Custodian dated 5/2/06 at 1:30 pm.	Contains advice.	Exempt as ACD – requests advice, opinion, recommendation.	Redact everything within quotation marks in the second sentence and redact the third sentence in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of the record.
54f	E-mail from Staib to the Custodian dated 5/2/06 at 12:50 pm.	Contains recommendations, statements and opinions.	Exempt as ACD – contains advice, opinions, recommendations.	Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> , except for the last paragraph. Disclose balance of record.
57	E-mail from Funke to Allen, Cicatiello and the Custodian dated 5/9/06 at 10:49 pm.	Contains statements regarding the attached final FAQ.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
57a	Record identified in the document index as “FAQ.”	Record that was attached to document index Item	Exempt as ACD – draft document.	Document index Item #57 states that this attachment to

		#57.		document index Item #57 is the final FAQ; however, the Custodian certifies that this item is a draft of FAQ. Accordingly, because the Custodian certifies that the record is a draft of FAQ, it is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
58	E-mail from Funke to Allen, Cicatiello and the Custodian dated 5/9/06 at 10:49 pm.	Contains statements regarding the attached final FAQ.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
58a	Record identified in the document index as "FAQ."	Record that was attached to document index Item #57.	Exempt as ACD – draft document.	Document index Item #57 states that this attachment to document index Item #57 is the final FAQ; however, the Custodian certifies that this item is a draft of FAQ. Accordingly, because the Custodian certifies that the record is a draft of FAQ, it is ACD material exempt from disclosure pursuant to

				<u>N.J.S.A. 47:1A-1.1.</u>
59	E-mail from Funke to Cicatiello and the Custodian dated 7/11/06 at 3:41 pm.	Contains statements.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
59a	Record identified in the document index as "statement for Mayor."	Record that was attached to document index Item #59.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
60	E-mail from Funke to Cicatiello and the Custodian dated 7/11/06 at 3:41 pm.	Contains statements.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
60a	Record identified in the document index as "statement for Mayor."	Record that was attached to document index Item #59.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
61a	E-mail from Funke to Cicatiello and the Custodian dated 7/11/06 at 3:41 pm.	Contains statements.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
61b	Record identified in the document index as "statement for Mayor."	Record that was attached to document index Item #59.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-</u>

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63a	Record identified in the document index as “power point presentation.”	Record that could be an attachment to disclosed e-mail (re: document index Item #63).	Exempt as ACD – appear to be drafts.	Custodian certifies that she is not sure this is the correct attachment to document index Item #63. It appears it is not the correct attachment because document index Item #63 references the subject as “newsletter copy with edits.” Further, the Custodian is also not certain if the attachment is a draft or not because she certifies that the record appears to be a draft. Because the Custodian cannot certify to a certainty that this record is a draft document, or even the proper attachment to the record responsive to the Complainant’s request, it is not ACD material; therefore, the record shall be disclosed.
64a	Record identified in the document index as “Strategy Memo.”	Four (4) page memorandum containing five (5) subheadings. Each	Exempt as ACD – contains suggestions, opinions, recommendations.	The following ACD material is exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-</u>

		subheading is set off in bold and underlined.		<p>1.1: Second subheading, second paragraph, last sentence. Redact everything after the word “happen.” Second subheading, third paragraph consisting of one sentence. Redact everything after the word “perspective.” Second subheading, fourth paragraph, redact last two sentences. Second subheading, last paragraph, redact first sentence. Third subheading, redact first three paragraphs. Third subheading, fourth paragraph, redact first sentence and redact everything in second sentence after the word “development” through the end of the paragraph. Third subheading, fifth paragraph, redact second sentence. Redact sixth paragraph. Fourth subheading, redact first six paragraphs. Fourth subheading, seventh paragraph, redact</p>
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				first and last sentences. Fifth subheading, redact first paragraph. Fifth subheading, second paragraph, first sentence, redact everything after the word “Monday” through the end of the sentence.
65	E-mail from Funke to Michael Simon, outside party (“Simon”), Allen, Gatti, Rhatican, Golaszewski, Murphy, Shamey, Cicatiello, and dmzusmc1, outside party (“dmzusmc”), dated 1/13/06 at 4:23 pm.	Transmittal forwarding attachment.	Exempt as ACD – contains suggestions, seeks opinions.	Redact the first sentence in the second paragraph in the body of the e-mail as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
65a	Record identified in the document index as “Internal Draft – do not circulate.”	Record that was attached to document index Item #65.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
66	E-mail from Cicatiello to Shamey, Rhatican, Murphy, and the Custodian dated 1/19/06 at 2:50 pm.	Contains statements and advice.	Exempt as ACD - advisory.	Redact identification of attachment. Redact first three sentences in body of e-mail. Disclose balance of record.
66a	Record identified in the document index as “draft letter.”	Record that was attached to document index Item	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure

		#65.		pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
67	E-mail from Cicatiello to Shamey, Gatti, Allen, Auriemma, Rhatican, Simon, Funke, Murphy, and the Custodian dated 1/20/06 at 4:18 pm.	Contains statements.	Exempt as ACD – contains suggestions, opinions.	Redact identification of attachment. Redact first three sentences in body of e-mail. Disclose balance of record.
67a	Record identified in the document index as “community letter.”	Record that was attached to document index Item #67.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
69a	Record identified in the document index as “Attachment to #69.”	Record that was attached to a disclosed e-mail.	No explanation/citation for non-disclosure. The Custodian states that it “[a]ppears to be the final document.”	Disclose record.
71	E-mail from Cicatiello to Shamey, Gatti, Allen, Auriemma, Rhatican, Dube, Funke, Murphy, and the Custodian dated 2/3/06 at 5:06 pm.	Contains recommendations, opinions and advice.	Exempt as attorney-client privileged and ACD – seeks advice; contains recommendations; draft document.	Not attorney-client privileged communication.  Redact second and third paragraphs within the body of the e-mail which contain advisory information and are ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.



71a	Record identified in the document index as "Final Mayor's Draft Statement."	Statement.	Exempt as attorney-client privileged and ACD – for discussion.	Not attorney-client privileged communication.  Documents for discussion are not necessarily ACD material exempt from disclosure under OPRA. Because the Custodian certifies this is the final draft and she does not provide any other legal reason to deny access, the record shall be disclosed.
72a-1	Record identified in the document index as "Final Mayor's Draft Statement."	Record attached to a disclosed e-mail.	No explanation/citation for non-disclosure.	Disclose.
72a-2	Record identified in the document index as "Final Mayor's Draft Statement."	Record attached to a disclosed e-mail.	No explanation/citation for non-disclosure.	Disclose.
73	E-mail from Cicatiello to Shamey, Gatti, Allen, Auriemma, Rhatican, Murphy, and the Custodian dated 2/21/06 at 11:27 am.	Contains statements and a recommendation on strategy.	Exempt as attorney-client privileged and ACD – contains recommendations, opinions.	Not attorney-client privileged communication.  Redact last sentence in the body of the e-mail which contains advisory information and is ACD material exempt from disclosure pursuant to

				<u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
73a (1-16)	Record identified in the document index as “power point presentation.”	Record that was attached to document index Item #73.	No legal reason or citation for non-disclosure.	Document index Item #73 states that this attachment to document index Item #73 is the final [draft]. Although the Custodian certifies that this item is a “draft power point presentation,” she fails to cite any OPRA provision for denying access. Accordingly, the record shall be disclosed.
75	E-mail from Cicatiello to Shamey, Gatti, Allen, Auriemma, Rhatican, Murphy, and Funke dated 2/24/06 at 4:34 pm.	Transmittal e-mail that contains statements and recommendations.	Exempt as attorney-client privileged and ACD – seeks advice.	Not attorney-client privileged communication.  Redact third and fourth sentence in the body of the e-mail which contains ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
75a	Record identified in the document index as “draft letter.”	Record that was attached to document index Item #75.	Exempt as attorney-client privileged and ACD – – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from

				disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
76	E-mail from Cicatiello to Shamey, Allen, Auriemma, Rhatican, Murphy, Funke and the Custodian dated 3/6/06 at 12:27 pm.	Contains statements.	Exempt as attorney-client privileged and ACD – contains opinions and recommendations.	Not attorney-client privileged communication.  Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
76a	Record identified in the document index as “strategy memo.”	Record that was attached to document index Item #76.	Exempt as attorney-client privileged and ACD – contains strategy, opinions recommendation and advice.	ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
77	E-mail from Cicatiello to Shamey, Allen, Auriemma, Rhatican, Murphy, Funke and the Custodian dated 3/9/06 at 12:32 pm.	Contains statements.	Exempt as attorney-client privileged and ACD – advisory.	Not attorney-client privileged communication.  Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
77a	Record identified in the document index as “draft letter to Solberg Aviation.”	Record that was attached to document index Item #77.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
78a1-2	Record identified in the document index	Record attached to a disclosed e-	Exempt as attorney-client privileged and	Not attorney-client privileged communication.

	as "letter to Residents."	mail.	ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
79a1-2	Record identified in the document index as "letter to Residents."	Record attached to a disclosed e-mail.	Exempt as attorney-client privileged and ACD – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
80	E-mail from Cicatiello to Dube, Allen, Staib, Rhatican, Murphy, and Funke dated 4/6/06 at 1:31 pm.	Statement.	Exempt as attorney-client privileged and ACD – seeks advice.	Not attorney-client privileged communication.  Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
80a	Record identified in the document index as "FAQ."	Record that was attached to document index Item #80.	Exempt as attorney-client privileged and ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
81	E-mail from Cicatiello to Shamey, Gatti, Auriemma, Dube, Allen, Staib, Rhatican, Murphy, Funke	Contains statements and advice.	Exempt as attorney-client privileged and ACD – contains opinions, seeks advice.	Not attorney-client privileged communication.  Redact first two sentences in the body of the e-mail

	and the Custodian dated 4/6/06 at 3:58 pm.			which contains ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
81a	Record identified in the document index as "FAQ."	Record that was attached to document index Item #81.	Exempt as attorney-client privileged and ACD – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
82a	Record identified in the document index as "FAQ."	Record attached to a disclosed e-mail.	Exempt as attorney-client privileged and ACD – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
83a	Record identified in the document index as "FAQ."	Record attached to a disclosed e-mail.	Exempt as attorney-client privileged and ACD – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
84a	Record identified in the document index	Record attached to a disclosed e-	Exempt as ACD – draft document.	Draft document - ACD material exempt from

	as “press release.”	mail.		disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
85a	Record identified in the document index as “press release.”	Record attached to a disclosed e-mail.	The Custodian references this record as a draft being the same as 84a. Document index Item 84a certified the record was exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
86a	Record identified in the document index as “press release.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
87a	Records identified in the document index as “Berger Transcript,” “Fed/State law doc” and meeting schedule.”	Records attached to a disclosed e-mail.	Exempt as ACD – draft documents.	Draft documents - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
93	E-mail from Rhatican to Cicatiello dated 7/1/06 at 8:44 am.	Contains concerns, queries and opinions.	Not responsive to the Complainant’s request because it is not between CN Communications and Township personnel. Also, exempt as attorney-client privileged and ACD – contains suggestions,	Record is responsive to the Complainant’s request.  Not attorney-client privileged communication.  Contains concerns, queries and opinions regarding a draft document and is

			opinions, recommendations.	ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
94	E-mail from Rhatican to Cicatiello, Allen, Funke, Murphy and the Custodian dated 6/29/06 at 8:07 am.	Contains concerns, opinions and recommendations.	Exempt as attorney-client privileged and ACD – contains advice, opinions, recommendations.	Redact the second and third paragraphs. In the fourth paragraph redact everything following the word “information”. Redact the fifth, sixth, and seventh paragraphs. Redact the first sentence in the eighth paragraph. The redacted material contains concerns, opinions and recommendations regarding a draft document and is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . For this reason, it is unnecessary to consider the applicability of the attorney-client privilege as a basis for denial of access (note that no unredacted material left in the record would be subject to such a privilege).

98	E-mail from Cicatiello to Allen, Rhatican, Funke and the Custodian dated 4/6/06 at 3:58 pm.	Contains a statement and a suggestion.	Same as explanation for document index item #97.	The Custodian disclosed document index Item #97; therefore this record shall be disclosed.
98a	Record identified in the document index as "draft talking points."	Record that was attached to document index Item #98.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
100	E-mail from Cicatiello to Shamey, Allen, Rhatican and Funke dated 1/9/06 at 3:16 pm.	Contains opinion	Exempt as ACD – contains opinion.	Redact everything after "Subject:" and redact the body of the letter as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
101	E-mail from Rhatican to Cicatiello, Allen and Shamey dated 1/9/06 at 12:10 pm.	Contains advisory material.	Exempt as ACD – contains opinion, query, thoughts.	Redact everything after "Subject:" and redact the first four sentences in the body of the letter as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
102	E-mail from Funke to Allen, Rhatican, Dube, Staib, Shamey, and Cicatiello dated 5/02/06 at 6:26 pm.	Contains advisory material.	Exempt as ACD – seeks advice, direction.	Redact everything after "Subject:" Redact attachment icon. In the first paragraph redact everything after the word "of." Redact the second and third



				paragraphs. This is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
103a	Record identified in the document index as "Press Release."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
104	E-mail from Funke to Rhatican, Golaszewski, Dube, Staib, Cicatiello, and Murphy dated 4/11/06 at 12:14 pm.	Contains queries and opinions regarding a draft document.	Not responsive to the Complainant's request because it is not between CN Communications and Township personnel. Also, exempt as attorney-client privileged and ACD – contains suggestions, opinions, recommendations.	Record is responsive to the Complainant's request because Rhatican is special counsel to the Township.  Not attorney-client privileged communication.  Redact the line after "Subject:" and redact the line after "Attachments:" Redact the third sentence in the first full paragraph and redact the second and third paragraphs. This is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
105	E-mail from Rhatican to Shamey,	Contains statements, recommenda-	Exempt as attorney-client privileged and	Redact the line after "Subject:" Redact all

	Golaszewski, Funke, Cicatiello, Allen, Gatti, Auriemma, Murphy, Dube, Staib and the Custodian dated 4/11/06 at 11:44 am.	tions, opinions and advice.	ACD – contains advice, opinions on a draft and recommendations.	numbered paragraphs. The redacted material contains opinions and recommendations regarding a draft document and is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . For this reason, it is unnecessary to consider the applicability of the attorney-client privilege as a basis for denial of access (note that no unredacted material left in the record would be subject to such a privilege).
106	E-mail from Shamey to Rhatican, Golaszewski, Funke, Cicatiello, Allen, Gatti, Auriemma, Murphy, Dube, Staib and the Custodian dated 4/10/06 at 11:09 am.	Contains opinions and advice.	Exempt as ACD – contains opinions and comments.	Redact the line after “Subject:” and redact the body of the e-mail as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
107	E-mail from Golaszewski to Shamey Rhatican, Funke, Cicatiello, Allen, Gatti,	Contains opinions and advice.	Not responsive to the Complainant’s request because it is not between CN Communications and	Record is not responsive to the Complainant’s request; therefore the Custodian lawfully denied access.

	Auriemma, Murphy, Dube, Staib and the Custodian dated 4/10/06 at 5:44 pm.		Township personnel. Also, exempt ACD – contains opinions, seeks advice.	
109a	Record identified in the document index as “Internal Discussion Draft.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
110	E-mail from Shamey to Rhatican and Golaszewski dated 4/10/06 at 11:09 am.	Contains query.	Not responsive to the Complainant’s request because it is not between CN Communications and Township personnel. Also, exempt ACD – seeks advice.	Record is not responsive to the Complainant’s request; therefore the Custodian lawfully denied access.
112	E-mail from Allen to Shamey Rhatican, Golaszewski, Cicatiello, Gatti, Auriemma, Dube and the Custodian dated 4/10/06 at 11:09 am.	Contains recommendations and elicits opinions and advice.	Exempt as ACD – contains opinions and seeks comments.	Redact the line after “Subject:” Redact the first full paragraph. This is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
113a	Record identified in the document index as “letter to Residents.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

**October 30, 2008**

Interim Decision sent to both parties.

**October 31, 2008**

Letter from the Custodian's Counsel to the GRC. Counsel acknowledges receipt by the Custodian of the Council's October 29, 2008 Interim order on October 30, 2008. Counsel also requests an extension of time for five (5) additional business days for the Custodian to comply with the terms of the Interim Order.

**October 31, 2008**

Letter from the GRC to Custodian's Counsel. The GRC grants approval of a five (5) business day extension of time, until November 13, 2008, for the Custodian to comply with the Council's Interim Order.

**November 12, 2008**

Custodian's certification in response to the Council's Interim Order. The Custodian certifies that she received the Council's October 29, 2008 Interim Order on October 30, 2008 and identified the records which the Council ordered to be disclosed to the Complainant in redacted or unredacted form in the Findings of the *In Camera* examination set forth in the *In Camera* Table of said Order. The Custodian further certifies that she reviewed all of the records vis-à-vis the *In Camera* Table in the Council's October 29, 2008 Interim Order, made all necessary redactions and provided copies of the disclosable records to the Complainant on November 12, 2008.

**March 23, 2009**

E-mail from the Complainant to the GRC. The Complainant states that he spoke with his legal counsel and DAG Debra Allen regarding the redactions ordered by the Council and, as a consequence of such conversations, is requesting the final adjudication be postponed pending his submission of a request for reconsideration of the Council's October 29, 2008 Interim Order.

**March 24, 2009**

E-mail from the GRC to the Complainant. The GRC informs the Complainant that the instant matter will be pulled from the agenda for the March 25, 2009 Council meeting and held in abeyance until the Complainant's request for reconsideration is reviewed by the GRC.

**June 30, 2009**

Complainant's request for reconsideration. The Complainant requests that the GRC reconsider the Council's October 29, 2008 Interim Order pursuant to *N.J.A.C. 5:105-2.10*. The Complainant asserts that the GRC reconsider this matter based upon mistake and new evidence.

The Complainant attaches to his request for reconsideration the following documents:

- Record Number 65 from the redaction table incorporated into the Council's October 29, 2008 Interim Order
- Record Number 67 from the redaction table incorporated into the Council's October 29, 2008 Interim Order
- Record Number 94 from the redaction table incorporated into the Council's October 29, 2008 Interim Order

The Complainant's Counsel argues that the Custodian's contention that records withheld from disclosure as advisory, consultative or deliberative ("ACD") material is not supported by the facts of the complaint as follows:

First, Counsel argues that the municipality is not authorized to use taxpayer money to pay a public relations firm to "spin" a story favorable to the municipality. Counsel cites Citizens to Protect Public Funds v. Board of Education of Parsippany-Troy Hills, 13 N.J. 172, 180-181 (1953) in support of his contention. Counsel argues that Readington's stated purpose in retaining CN Communications was to provide factual information to residents, and that withholding records as ACD material is inconsistent with such stated purpose. The Complainant's Counsel further argues that the Complainant is a taxpayer in Readington and has a legitimate interest in obtaining information regarding the services provided by CN Communications, especially because CN Communications' initial involvement in a special election was channeled through a special counsel. Counsel argues that the Complainant's right to obtain full details about CN Communications' involvement outweighs the need of Readington to avoid scrutiny.

Second, Counsel argues that certain e-mails involved third-party recipients who were neither CN Communications personnel nor Readington Township personnel. Counsel argues that when privileged communications are disclosed to third parties any privilege which may have attached to the communication is waived. Counsel contends that, for this reason, the records should be disclosed.

Third, Counsel states that the document identified as Record Number 94 in the redaction table incorporated into the Council's October 29, 2008 Interim Order was not listed or discussed in the GRC findings; however, it was essentially redacted in full. Counsel states there was no explanation or legal basis for redacting the record; therefore it should be included in the reconsideration sought by the Complainant.

#### **July 2, 2009**

E-mail from the GRC to the Custodian. The GRC asks the Custodian to submit a certification as to whether any of the draft documents in the document index have been incorporated into a finalized policy.

#### **July 13, 2009**

Custodian's objection to the request for reconsideration. The Custodian's Counsel contends that the Complainant's request for reconsideration of the Council's October 29, 2008 Interim Order should not be granted because it was filed out of time. Counsel states that pursuant to *N.J.A.C. 5:105-2.10*, requests for reconsideration must be filed within ten (10) business days following receipt of a Council decision. Counsel further states that Council's October 29, 2008 Interim Order, which the Complainant wants reconsidered, was served by the GRC on all parties by letter dated October 30, 2008. Counsel states that the letter provided, *inter alia*, for reconsideration as a means of appealing the Interim Order, and mentioned that a request for reconsideration was to be "...delivered to the GRC within ten (10) business days following receipt of a GRC decision and contemporaneously served upon all parties of the complaint pursuant to *N.J.A.C. 5:105-2.10*." Counsel states that the letter also directed the parties to the GRC website containing the request for reconsideration form. The Custodian's Counsel further states that the form clearly states that it must be filed within

the ten (10) day period. Counsel asserts that the Complainant did not bother to file his request for reconsideration with the GRC for eight (8) months, and further, that the Complainant's affirmation that he was filing the form within the time provided was not true.

The Custodian's Counsel next contends that there is no basis for reconsideration due to mistake or new evidence. Counsel states that Record Number 65 and Record Number 67 from the redaction table incorporated into the Council's October 29, 2008 Interim Order were also in the Custodian's Vaughn Index Number Two. Counsel notes that it was unfortunate that a third-party recipient was listed on these records; however, Counsel contends that the records also contained draft information and draft attachments that should not be disclosed just because a third-party was copied. Counsel cites to Jennifer Beck and Sean T. Kean v. Barbara O'Hare, MER-L-2411-07 (November 26, 2007), an unpublished Law Division case which held that draft consultant's reports are pre-decisions and are therefore not subject to disclosure under OPRA. Further, Counsel states that the existence of the third-party's name on said records was not new evidence because the GRC had notice of it via a letter from the Custodian's Counsel dated September 12, 2007.

Counsel also states that Record Number 94 from the redaction table incorporated into the Council's October 29, 2008 Interim Order was misidentified and should have been listed as Record Number 96.

Counsel contends that the Complainant's reliance upon Citizens, *supra*, to argue against Readington's retention of CN Communications is ineffectual because Citizens is not applicable to the facts of the instant complaint. Counsel distinguishes Citizens, and purports that the case was fact specific and the court did not hold that a public relations firm could not be hired at public expense to espouse the school board's viewpoint.

The Custodian's Counsel contends that the GRC should not grant reconsideration of the Council's Order.

### **July 20, 2009**

Custodian's certification. The Custodian forwards a certification to the GRC in response to the GRC's e-mail request dated July 2, 2009, in which the Custodian avers that there was no "one" final report produced by CN Communications that was a culmination of the content of the records that were listed in the document indexes provided for in the *in camera* examination. The Custodian also corrects her September 29, 2006 certification to the GRC wherein she referred to a press release dated April 3, 2006. The Custodian now avers that the reference should have been to a Power Point® presentation which occurred at a meeting held on April 3, 2006.

### **Analysis**

#### **Whether the Complainant has met the required standard for reconsideration of the Council's October 29, 2008 Interim Order?**

Pursuant to *N.J.A.C. 5:105-2.10*, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all

parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. *N.J.A.C. 5:105-2.10(a) – (e)*.

The Custodian's Counsel has fashioned a cogent argument against GRC acceptance of the Complainant's request for reconsideration because said request was submitted out of time. However, because the Council's October 29, 2008 Interim Order is extraordinarily extensive and contains numerous chains of e-mail correspondence with several attachments appended to each, it is not unforeseeable that it would take the Complainant some time to review the Order, obtain legal advice, decide whether to appeal the decision and discuss the viability of such a decision with legal counsel. Accordingly, due to such extenuating circumstances, the GRC has decided to allow the Complainant's request for reconsideration out of time in this one instance.

With respect to reconsideration, applicable case law holds that:

“[a] party should not seek reconsideration merely based upon dissatisfaction with a decision.” *D'Atria v. D'Atria*, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, *Cummings v. Bahr*, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. *D'Atria, supra*, 242 N.J. Super. at 401. 'Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.' *Ibid.*" In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

In his request for reconsideration, the Complainant's Counsel argued that the Complainant's right to obtain full details about CN Communications' involvement outweighs the need of Readington to avoid scrutiny. It appears the Complainant is arguing that the GRC should engage in a common law balancing test to decide whether the requested records should be disclosed. The GRC will not engage in a balancing test except under a very limited set of circumstances, generally this is when privacy interests are implicated and the GRC must exercise its discretion in determining whether the privacy interest of the individuals named in government records are outweighed by any factors militating in favor of disclosure, including the requestor's stated need for access to such information. The GRC will not engage in the balancing test when the fact pattern of the complaint is such that one or more provisions of OPRA are clearly applicable.

In the instant complaint, the Custodian asserted ACD as the primary legal reason for denying the Complainant access. Denial of access to some portions of the requested records

was asserted due to the attorney-client privilege. These legal reasons for denying access may be found in N.J.S.A. 47:1A-1.1. Accordingly, it was unnecessary for the GRC to engage in the balancing test to determine if the requested records were unlawfully withheld from disclosure.

The Complainant also argued that certain e-mails involved third-party recipients who were neither CN Communications nor Readington Township personnel. The Complainant's Counsel argued that when privileged communications are disclosed to third parties any privilege which may have attached to the communication is waived. The two (2) e-mails Counsel points to are Record Numbers 65 and 67 in the redaction table incorporated into the Council's October 29, 2008 Interim Order. The sole reason for the Complainant being denied access to these two (2) e-mails was that the Custodian asserted they contained ACD material. Pursuant to N.J.S.A. 47:1A-1.1, if a record is ACD it is not a government record and that is the reason it is exempt from disclosure. Unlike a privilege, such as the attorney-client privilege, it does not matter how many third parties are privy to the communication with ACD material because if the material is not a government record it is exempt from disclosure.

Finally, the Complainant's Counsel stated that the record identified as Record Number 94 in the redaction table incorporated into the Council's October 29, 2008 Interim Order was not listed or discussed in the GRC findings; however, it was essentially redacted in full. Counsel wants the record included in the reconsideration to determine its status. There are no records listed in the redaction table between Record Number 93 and Record Number 98 except for Record Number 94. This record was incorrectly listed in the redaction table incorporated into the Council's Order. It should have been listed as "Record Number 96." Each of the records listed in the redaction table are identified via both record number and record name/date. The record at issue is dated June 29, 2006 at 8:07 a.m. This is the same description of the record listed as Item #96 of the Custodian's Vaughn Index Number Three.

The Complainant alleged as grounds for reconsideration new evidence that did not exist prior to the Council's decision in this matter, however, the Complainant failed to submit any new evidence in support of his request for reconsideration. The Complainant also alleged mistake as further grounds for reconsideration, but the mistake was a typographical error in a record number that was verifiable through other means set forth in the Council's Order.

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above; namely 1) that the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence. See Cummings, supra. The Complainant failed to do so. The Complainant has also failed to show that the Council's final decision in this matter is arbitrary, capricious or unreasonable. See D'Atria, supra.

Therefore, because the Complainant has failed to establish in his request for reconsideration of the Council's October 29, 2008 Interim Order that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and rendered an arbitrary,



capricious or unreasonable decision, said request for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

### **Whether the Custodian complied with the Council's October 29, 2008 Interim Order?**

Because the Custodian certified that she reviewed all of the records vis-à-vis the *In Camera* Table in the Council's October 29, 2008 Interim Order, made all necessary redactions and provided copies of the disclosable records to the Complainant on November 12, 2008, which is within the time period set forth in the Interim Order as extended, and because the Custodian subsequently provided a timely certification to the GRC, the Custodian has complied with the Council's October 29, 2008 Interim Order.

### **Whether the Custodian's actions rise 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).

In its April 25, 2007 Interim Order, the Council determined that the Custodian violated N.J.S.A. 47:1A-5.i by not granting or denying the Complainant access to the

records responsive to the Complainant's request within the statutorily mandated seven (7) business days and that the Custodian failed to obtain a written agreement from the Complainant extending the time the Custodian had to fulfill the Complainant's OPRA request pursuant to Paff v. Bergen County Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006). The Council also determined that regardless of the vagueness of an OPRA request, the Custodian is statutorily mandated to seek clarification for any requests deemed broad or unclear within seven (7) business days. Tucker Kelley v. Rockaway Township, GRC Complaint No. 2006-176 (March 2007).

Although the Custodian failed to respond in writing to the Complainant's entire OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, the Custodian did comply in a timely manner to the Council's April 25, 2007 Interim Order directing the Custodian to provide records to the GRC for *in camera* inspection. The Custodian also complied with the Council's October 29, 2008 Interim Order in a timely manner disclosing a large quantity of redacted and unredacted records to the Complainant. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

**Whether the Complainant is a "prevailing party" pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney's fees?**

OPRA provides that:

"[a] person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:  
institute a proceeding to challenge the custodian's decision by filing an action in Superior Court...; or  
in lieu of filing an action in Superior Court, file a complaint with the Government Records Council...  
A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6.

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

In Teeters, the complainant appealed from a final decision of the GRC which denied an award for attorney's fees incurred in seeking access to certain public records via two complaints she filed under OPRA, N.J. Stat. Ann. § 47:1A-6 and N.J. Stat. Ann. § 47:1A-7(f), against the Division of Youth and Family Services ("DYFS"). The records sought involved an adoption agency having falsely advertised that it was licensed in New Jersey.

DYFS eventually determined that the adoption agency violated the licensing rules and reported the results of its investigation to the complainant. The complainant received the records she requested upon entering into a settlement with DYFS. The court found that the complainant engaged in reasonable efforts to pursue her access rights to the records in question and sought attorney assistance only after her self-filed complaints and personal efforts were unavailing. *Id.* at 432. With that assistance, she achieved a favorable result that reflected an alteration of position and behavior on DYFS's part. *Id.* As a result, the complainant was a prevailing party entitled to an award of a reasonable attorney's fee. Accordingly, the Court remanded the determination of reasonable attorney's fees to the GRC for adjudication.

In the instant complaint, the Complainant sought a finding that the Custodian violated OPRA and denied access by withholding from disclosure, *inter alia*, a large quantity of e-mail communications responsive to the Complainant's request that were alleged to be exempt from disclosure under N.J.S.A. 47:1A-1.1 because they constituted advisory, consultative or deliberative material. After the GRC conducted an *in camera* examination, the Council ordered disclosure of several e-mail records in redacted and unredacted form. The Custodian subsequently certified on November 12, 2008 that she "...supplied all the documents as required by the [October 29, 2008] Interim Order to the Complainant..."

Therefore, pursuant to Teeters, *supra*, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6 and Teeters, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the Complainant has failed to establish in his request for reconsideration of the Council's October 29, 2008 Interim Order that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and rendered an arbitrary, capricious or unreasonable decision, said request for reconsideration is denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of South Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Television System In The City Of Atlantic City, County Of Atlantic, State Of New Jersey, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
2. Because the Custodian certified that she reviewed all of the records vis-à-vis the *In Camera* Table in the Council's October 29, 2008 Interim Order, made all necessary redactions and provided copies of the disclosable records to the Complainant on November 12, 2008, which is within the time period set forth in the Interim Order as extended, and because the Custodian subsequently provided

a timely certification to the GRC, the Custodian has complied with the Council's October 29, 2008 Interim Order.

3. Although the Custodian failed to respond in writing to the Complainant's entire OPRA request granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, the Custodian did comply in a timely manner to the Council's April 25, 2007 Interim Order directing the Custodian to provide records to the GRC for *in camera* inspection. The Custodian also complied with the Council's October 29, 2008 Interim Order in a timely manner disclosing a large quantity of redacted and unredacted records to the Complainant. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.
4. Pursuant to Teeters v. DYFS, 387 N.J.Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6 and Teeters. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees.

Prepared By: John E. Stewart  
Case Manager/*In Camera* Attorney

Approved By: Catherine Starghill, Esq.  
Executive Director

September 23, 2009



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

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COMMISSIONER LUCILLE DAVY  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

**INTERIM ORDER**

**October 29, 2008 Government Records Council Meeting**

Donald Baldwin  
Complainant

Complaint No. 2006-165

v.

Township of Readington  
Custodian of Record

At the October 29, 2008 public meeting, the Government Records Council ("Council") considered the October 22, 2008 *In Camera* Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. By a majority vote, the Council adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian has complied with the Council's April 25, 2007 Interim Order by providing the Council with all records set forth in Paragraph 3 of the Order within five (5) business days of receiving the Council's Order, as extended.
2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the table below within five (5) business days from receipt of this Order and provide certified confirmation of compliance pursuant to N.J. Court Rules, R. 1:4-4 (2005) to the Executive Director.**

Record Number	Record Name/Date	Description of Record	Custodian's Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination
2	E-mail from Jonathan Funke, CN	Contains opinions regarding a	Exempt as ACD - entire document consists of	Redact: The second and third sentences in



	Communications to Julia Allen, Township Committee member (“Allen”); Frank Gatti, Township Official (“Gatti”); Tom Auriemma, Township Committee member (“Auriemma”); Jay Rhatican, special counsel (“Rhatican”); Joseph Murphy, special counsel (“Murphy”); Anthony Cicatiello, CN Communications consultant (“Cicatiello”); and the Custodian dated 2/7/06 at 5:32 pm.	record identified in the document index as a “draft letter.”	opinions on draft letter, strategy.	the first paragraph. <sup>1</sup> The second paragraph. The second sentence in the third paragraph. The second sentence in the fourth paragraph. The fifth paragraph. This is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
2a	E-mail from Allen to Gatti, Auriemma, Cicatiello, Rhatican, Funke, Murphy and the Custodian dated 2/7/06 at 5:13 pm.	Contains query.	Exempt as ACD – poses question with suggestion and opinion.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.

<sup>1</sup> Any group of words set off by indentation, bullets, numbering, extra space or a similar separation device is considered a separate paragraph for *in camera* examination purposes. The salutation and closing are not considered paragraphs.

3a	Same record as #2.	Same description as #2.	Same explanation/ citation for non-disclosure as #2.	Same finding as #2.
3b	Same record as #2a.	Same description as #2a.	Same explanation/ citation for non-disclosure as #2a.	Same finding as #2a.
4b	Same record as #2.	Same description as #2.	Same explanation/ citation for non-disclosure as #2.	Same finding as #2.
4c	Same record as #2a.	Same description as #2a.	Same explanation/ citation for non-disclosure as #2a.	Same finding as #2a.
5c	Same record as #2.	Same description as #2.	Same explanation/ citation for non-disclosure as #2.	Same finding as #2.
5d	Same record as #2a.	Same description as #2a.	Same explanation/ citation for non-disclosure as #2a.	Same finding as #2a.
6	E-mail from Funke to the Custodian dated 2/8/06 at 4:48 pm.	Contains opinion and recommendations.	Exempt as ACD – contains opinion, discussion, seeks direction.	Redact the line after “Subject:” Disclose first paragraph [five ( 5) words] and redact balance of record as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
7d	Same record as #2.	Same description as #2.	Same explanation/ citation for non-disclosure as	Same finding as #2.

			#2.	
7e	Same record as #2a.	Same description as #2a.	Same explanation/ citation for non-disclosure as #2a.	Same finding as #2a.
8	E-mail from Funke to Allen, Gatti, Auriemma, Cicatiello, Rhatican and the Custodian dated 2/9/06 at 4:34 pm.	Contains opinion and statements.	Exempt as ACD - contains opinions.	Redact second sentence of first paragraph as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
9	E-mail from Allen to Gatti, Auriemma, Rhatican, Funke, and the Custodian dated 2/7/06 at 5:13 pm.	Contains statements.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
10	E-mail from Funke to Allen, Gatti, Auriemma, Cicatiello, Rhatican and the Custodian dated 2/9/06 at 5:15 pm.	Contains opinions and recommendations.	Exempt as ACD.	Redact paragraph beginning with "Basically" and paragraph beginning with "Nothing" (middle two paragraphs) as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
10a	Same record as #9.	Same description as #9.	Same explanation/ citation for non-disclosure as #9.	Same finding as #9.
10b	Record identified in the	Record that was attached	Exempt as ACD – draft for	Draft document - ACD material



	document index as "Attachment to 10a."	to document index Item #10a.	review.	exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
11	E-mail from the Custodian to Funke, Allen, Gatti, Auriemma, Cicatiello, and Rhatican dated 2/9/06 at 5:53 pm.	Contains inquiry and statements.	Exempt as ACD – seeks direction.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD. If the cell phone is personal property, the phone number may be redacted pursuant to the provisions of <u>N.J.S.A. 47:1A-1.1</u> .
11a	Same record as #10.	Same description as #10.	Same explanation/ citation for non-disclosure as #10.	Same finding as #10.
11b	Same record as #9.	Same description as #9.	Same explanation/ citation for non-disclosure as #9.	Same finding as #9.
12	E-mail from Funke to Allen, Gatti, Auriemma, Cicatiello, Rhatican and the Custodian dated 2/10/06 at 3:28 pm.	Contains statements and seeks cooperation.	Exempt as ACD – seeks direction.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
12a	Record identified in the document index as "Attachment	Record that was attached to document index Item	Exempt as ACD – draft for review.	Draft document - ACD material exempt from disclosure

	to 10a.”	#10a.		pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
15	E-mail from Allen to Gatti, Auriemma, Funke, Gerald Shamey, Mayor (“Shamey”) and the Custodian dated 2/13/06 at 1:18 pm.	Contains opinions and recommendations.	Exempt as ACD.	Redact sentence beginning with “First Para.” and sentence beginning with “second para.” as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
16	E-mail from Funke to the Custodian dated 2/27/06 at 12:29 pm.	Transmittal forwarding attachment.	Exempt as ACD – advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
16a	Record identified in the document index as “Draft Letter.”	Record that was attached to document index Item #16.	Exempt as ACD – draft. Custodian also notes that this letter was made available to the public immediately.	Disclose – not ACD material. Because the Custodian certifies that the letter was immediately released to the public, it is the final version and no longer a draft; therefore the record shall be disclosed.
18	Record identified in the document index as “FAQ.”	FAQ	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

19	E-mail from Funke to Allen, Gatti, Shamey, Auriemma, Cicatiello, Rhatican, Murphy, Vanessa Dube, CN Communications consultant ("Dube"); Roger Staib, CN Communications consultant ("Staib"); Rich Golaszewski, GRA, Inc., outside party ("Golaszewski") and the Custodian dated 4/11/06 at 12:34 pm.	Transmittal forwarding attachment. Contains advice.	Exempt as ACD – contains opinion on draft position paper.	Redact everything in the second sentence of the first paragraph between the words "on the" and "but this" as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
20	E-mail from Funke to Allen, Gatti, Shamey, Auriemma, Cicatiello, Rhatican, Murphy, Dube, Staib, Golaszewski, and the Custodian dated 4/10/06 at 5:05 pm.	Transmittal forwarding attachment.	Exempt as ACD – requests opinion/advice on draft position paper.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
20a	Document identified in the document index as "FAQ."	Record that was attached to document index Item #20.	Exempt as ACD.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-</u>

				1.1.
23a	Document identified in the document index as "Meeting schedule."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
24	E-mail from Cicatiello to Funke, Allen, Gatti, Shamey, Auriemma, Rhatican, Murphy, Dube, Staib, and the Custodian dated 4/10/06 at 5:05 pm.	Contains statements and seeks cooperation.	Exempt as ACD – seeks advice on draft document.	Redact last sentence in the only full paragraph. as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
24a	Document identified in the document index as "position letter."	Record that was attached to document index Item #24.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
24b	Document identified in the document index as "suggested meeting dates."	Record that was attached to document index Item #24.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
25a	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
25b	Record identified in the document index as "Fed/State Role."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to

				<u>N.J.S.A. 47:1A-1.1.</u>
26a	Record identified in the document index as "Schedule of Meetings."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
27a	Record identified in the document index as "mayor letter."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
27b	Record identified in the document index as "Schedule of Meetings."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
31	E-mail from Cicatiello to Royal Printing Company and the Custodian dated 4/19/06 at 2:22 pm.	Transmittal contains statement.	Not responsive to the Complainant's request because it is not between CN Communications and Township personnel. Also, exempt as ACD.	Record is responsive to the Complainant's request because the Custodian is a Township official.  Redact words in quotation marks as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
33a	Record identified in the document index as "FAQ."	Record attached to a disclosed e-mail.	Exempt as ACD: pre-decisional.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

34a	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
35	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
36	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
37a	Record identified in the document index as "ballot question."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
38	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41	E-mail from Staib to Dube, Cicatiello and Funke dated 5/1/06 at 7:06 am.	Contains statements and opinions.	Not responsive to the Complainant's request because it is between CN Communication consultants. Also, exempt as ACD.	Record is not responsive to the Complainant's request; therefore the Custodian lawfully denied access.

41a	Record identified in the document index as "Technical Note."	Record that was attached to document index Item #41.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41b	Record identified in the document index as "FAQ."	Record that was attached to document index Item #41.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41c	Record identified in the document index as "Transcript."	Record that was attached to document index Item #41.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41d	Record identified in the document index as "Fed/State Role."	Record that was attached to document index Item #41.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41e	Record identified in the document index as "Meeting Schedule."	Record that was attached to document index Item #41.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41f	Record identified in the document index as "Technical Note."	Record that was attached to document index Item #41.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-</u>

				1.1.
44b	Record identified in the document index as "Attachment to 44a."	Record that was attached to a disclosed e-mail.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
45a	Record identified in the document index as "proposed master plan cover."	Record that was attached to a disclosed e-mail.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
45b	Record identified in the document index as "graphic."	Record that was attached to a disclosed e-mail.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
47	E-mail from Staib to the Custodian dated 5/2/06 at 12:50 pm.	Contains recommendation, statements and opinions.	Exempt as ACD – contains advice, opinions, recommendations.	Redact the line after "Subject:" Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> , except for the last paragraph.
50	E-mail from Staib to the Custodian dated 5/2/06 at 1:30 pm.	Contains advice.	Exempt as ACD – requests advice, opinion, recommendation.	Redact everything within quotation marks in the second sentence and redact the third sentence in the body of the correspondence as



				ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of the record.
50b	E-mail from Staib to the Custodian dated 5/2/06 at 12:50 pm.	Contains recommendation, statements and opinions.	Exempt as ACD – contains suggestions and recommendations.	Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> , except for the last paragraph. Disclose balance of record.
52	E-mail from Staib to the Custodian dated 5/2/06 at 1:53 pm.	Contains recommendations.	Exempt as ACD – contains advice, opinions, recommendations.	Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
52b	E-mail from Staib to the Custodian dated 5/2/06 at 1:30 pm.	Contains advice.	Exempt as ACD – requests advice, opinion, recommendation.	Redact everything within quotation marks in the second sentence and redact the third sentence in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of the record.

52d	E-mail from Staib to the Custodian dated 5/2/06 at 12:50 pm.	Contains recommendation, statements and opinions.	Exempt as ACD – contains advice, opinions, recommendations.	Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> , except for the last paragraph. Disclose balance of record.
54b	E-mail from Staib to the Custodian dated 5/2/06 at 1:53 pm.	Contains recommendations.	Exempt as ACD – contains advice, opinions, recommendations.	Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
54d	E-mail from Staib to the Custodian dated 5/2/06 at 1:30 pm.	Contains advice.	Exempt as ACD – requests advice, opinion, recommendation.	Redact everything within quotation marks in the second sentence and redact the third sentence in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of the record.
54f	E-mail from Staib to the Custodian dated 5/2/06 at 12:50 pm.	Contains recommendation, statements and opinions.	Exempt as ACD – contains advice, opinions, recommendations.	Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-</u>

				1.1., except for the last paragraph. Disclose balance of record.
57	E-mail from Funke to Allen, Cicatiello and the Custodian dated 5/9/06 at 10:49 pm.	Contains statements regarding the attached final FAQ.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
57a	Record identified in the document index as "FAQ."	Record that was attached to document index Item #57.	Exempt as ACD – draft document.	Document index Item #57 states that this attachment to document index Item #57 is the final FAQ; however, the Custodian certifies that this item is a draft of FAQ. Accordingly, because the Custodian certifies that the record is a draft of FAQ, it is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
58	E-mail from Funke to Allen, Cicatiello and the Custodian dated 5/9/06 at 10:49 pm.	Contains statements regarding the attached final FAQ.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
58a	Record identified in the document index	Record that was attached to document	Exempt as ACD – draft document.	Document index Item #57 states that this

	as "FAQ."	index Item #57.		attachment to document index Item #57 is the final FAQ; however, the Custodian certifies that this item is a draft of FAQ. Accordingly, because the Custodian certifies that the record is a draft of FAQ, it is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
59	E-mail from Funke to Cicatiello and the Custodian dated 7/11/06 at 3:41 pm.	Contains statements.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
59a	Record identified in the document index as "statement for Mayor."	Record that was attached to document index Item #59.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
60	E-mail from Funke to Cicatiello and the Custodian dated 7/11/06 at 3:41 pm.	Contains statements.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
60a	Record identified in the	Record that was attached	Exempt as ACD – draft	Draft document - ACD material

	document index as "statement for Mayor."	to document index Item #59.	document.	exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
61a	E-mail from Funke to Cicatiello and the Custodian dated 7/11/06 at 3:41 pm.	Contains statements.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
61b	Record identified in the document index as "statement for Mayor."	Record that was attached to document index Item #59.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
63a	Record identified in the document index as "power point presentation."	Record that could be an attachment to disclosed e-mail (re: document index Item #63).	Exempt as ACD – appear to be drafts.	Custodian certifies that she is not sure this is the correct attachment to document index Item #63. It appears it is not the correct attachment because document index Item #63 references the subject as "newsletter copy with edits." Further, the Custodian is also not certain if the attachment is a draft or not because she certifies that the record appears to be a draft.

				Because the Custodian cannot certify to a certainty that this record is a draft document, or even the proper attachment to the record responsive to the Complainant's request, it is not ACD material; therefore, the record shall be disclosed.
64a	Record identified in the document index as "Strategy Memo."	Four (4) page memorandum containing five (5) subheadings. Each subheading is set off in bold and underlined.	Exempt as ACD – contains suggestions, opinions, recommendations.	The following ACD material is exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> : Second subheading, second paragraph, last sentence. Redact everything after the word "happen." Second subheading, third paragraph consisting of one sentence. Redact everything after the word "perspective." Second subheading, fourth paragraph, redact last two sentences. Second subheading, last paragraph, redact first sentence. Third subheading,

				<p>redact first three paragraphs. Third subheading, fourth paragraph, redact first sentence and redact everything in second sentence after the word “development” through the end of the paragraph. Third subheading, fifth paragraph, redact second sentence. Redact sixth paragraph. Fourth subheading, redact first six paragraphs. Fourth subheading, seventh paragraph, redact first and last sentences. Fifth subheading, redact first paragraph. Fifth subheading, second paragraph, first sentence, redact everything after the word “Monday” through the end of the sentence.</p>
65	E-mail from Funke to Michael Simon, outside party (“Simon”), Allen, Gatti, Rhatican, Golaszewski, Murphy, Shamey,	Transmittal forwarding attachment.	Exempt as ACD – contains suggestions, seeks opinions.	Redact the first sentence in the second paragraph in the body of the e-mail as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose

	Cicatiello, and dmzusmc1, outside party (“dmzusmc”), dated 1/13/06 at 4:23 pm.			balance of record.
65a	Record identified in the document index as “Internal Draft – do not circulate.”	Record that was attached to document index Item #65.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
66	E-mail from Cicatiello to Shamey, Rhatican, Murphy, and the Custodian dated 1/19/06 at 2:50 pm.	Contains statements and advice.	Exempt as ACD - advisory.	Redact identification of attachment. Redact first three sentences in body of e-mail. Disclose balance of record.
66a	Record identified in the document index as “draft letter.”	Record that was attached to document index Item #65.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
67	E-mail from Cicatiello to Shamey, Gatti, Allen, Auriemma, Rhatican, Simon, Funke, Murphy, and the Custodian dated 1/20/06 at 4:18 pm.	Contains statements.	Exempt as ACD – contains suggestions, opinions.	Redact identification of attachment. Redact first three sentences in body of e-mail. Disclose balance of record.
67a	Record identified in the document index as “community letter.”	Record that was attached to document index Item #67.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to



				<u>N.J.S.A. 47:1A-1.1.</u>
69a	Record identified in the document index as "Attachment to #69."	Record that was attached to a disclosed e-mail.	No explanation/citation for non-disclosure. The Custodian states that it "[a]ppears to be the final document."	Disclose record.
71	E-mail from Cicatiello to Shamey, Gatti, Allen, Auriemma, Rhatican, Dube, Funke, Murphy, and the Custodian dated 2/3/06 at 5:06 pm.	Contains recommendations, opinions and advice.	Exempt as attorney-client privileged and ACD – seeks advice; contains recommendation sraft document.	Not attorney-client privileged communication.  Redact second and third paragraphs within the body of the e-mail which contain advisory information and are ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
71a	Record identified in the document index as "Final Mayor's Draft Statement."	Statement.	Exempt as attorney-client privileged and ACD – for discussion.	Not attorney-client privileged communication.  Documents for discussion are not necessarily ACD material exempt from disclosure under OPRA. Because the Custodian certifies this is the final draft and she does not provide any other legal reason to deny

				access, the record shall be disclosed.
72a-1	Record identified in the document index as "Final Mayor's Draft Statement."	Record attached to a disclosed e-mail.	No explanation/citation for non-disclosure.	Disclose.
72a-2	Record identified in the document index as "Final Mayor's Draft Statement."	Record attached to a disclosed e-mail.	No explanation/citation for non-disclosure.	Disclose.
73	E-mail from Cicatiello to Shamey, Gatti, Allen, Auriemma, Rhatican, Murphy, and the Custodian dated 2/21/06 at 11:27 am.	Contains statements and a recommendation on strategy.	Exempt as attorney-client privileged and ACD – contains recommendations, opinions.	Not attorney-client privileged communication.  Redact last sentence in the body of the e-mail which contains advisory information and is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
73a (1-16)	Record identified in the document index as "power point presentation."	Record that was attached to document index Item #73.	No legal reason or citation for non-disclosure.	Document index Item #73 states that this attachment to document index Item #73 is the final [draft]. Although the Custodian certifies that this item is a "draft power point

				presentation,” she fails to cite any OPRA provision for denying access. Accordingly, the record shall be disclosed.
75	E-mail from Cicatiello to Shamey, Gatti, Allen, Auriemma, Rhatican, Murphy, and Funke dated 2/24/06 at 4:34 pm.	Transmittal e-mail that contains statements and recommendations.	Exempt as attorney-client privileged and ACD – seeks advice.	Not attorney-client privileged communication.  Redact third and fourth sentence in the body of the e-mail which contains ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
75a	Record identified in the document index as “draft letter.”	Record that was attached to document index Item #75.	Exempt as attorney-client privileged and ACD – – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
76	E-mail from Cicatiello to Shamey, Allen, Auriemma, Rhatican, Murphy, Funke and the Custodian dated 3/6/06 at 12:27 pm.	Contains statements.	Exempt as attorney-client privileged and ACD – contains opinions and recommendations.	Not attorney-client privileged communication.  Disclose: Does not contain opinions, recommendations, or advice about agency policies;

				therefore, it is not ACD.
76a	Record identified in the document index as "strategy memo."	Record that was attached to document index Item #76.	Exempt as attorney-client privileged and ACD – contains strategy, opinions recommendation and advice.	ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
77	E-mail from Cicatiello to Shamey, Allen, Auriemma, Rhatican, Murphy, Funke and the Custodian dated 3/9/06 at 12:32 pm.	Contains statements.	Exempt as attorney-client privileged and ACD – advisory.	Not attorney-client privileged communication.  Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
77a	Record identified in the document index as "draft letter to Solberg Aviation."	Record that was attached to document index Item #77.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
78a1-2	Record identified in the document index as "letter to Residents."	Record attached to a disclosed e-mail.	Exempt as attorney-client privileged and ACD – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
79a1-2	Record identified in the document index as "letter to	Record attached to a disclosed e-mail.	Exempt as attorney-client privileged and ACD – draft	Not attorney-client privileged communication.

	Residents.”		document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
80	E-mail from Cicatiello to Dube, Allen, Staib, Rhatican, Murphy, and Funke dated 4/6/06 at 1:31 pm.	Statement.	Exempt as attorney-client privileged and ACD – seeks advice.	Not attorney-client privileged communication.  Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
80a	Record identified in the document index as “FAQ.”	Record that was attached to document index Item #80.	Exempt as attorney-client privileged and ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
81	E-mail from Cicatiello to Shamey, Gatti, Auriemma, Dube, Allen, Staib, Rhatican, Murphy, Funke and the Custodian dated 4/6/06 at 3:58 pm.	Contains statements and advice.	Exempt as attorney-client privileged and ACD – contains opinions, seeks advice.	Not attorney-client privileged communication.  Redact first two sentences in the body of the e-mail which contains ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
81a	Record identified in the	Record that was attached	Exempt as attorney-client	Not attorney-client privileged

	document index as "FAQ."	to document index Item #81.	privileged and ACD – draft document.	communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
82a	Record identified in the document index as "FAQ."	Record attached to a disclosed e-mail.	Exempt as attorney-client privileged and ACD – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
83a	Record identified in the document index as "FAQ."	Record attached to a disclosed e-mail.	Exempt as attorney-client privileged and ACD – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
84a	Record identified in the document index as "press release."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
85a	Record identified in the document index as "press	Record attached to a disclosed e-mail.	The Custodian references this record as a draft being the same	Draft document - ACD material exempt from disclosure

	release.”		as 84a. Document index Item 84a certified the record was exempt as ACD – draft document.	pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
86a	Record identified in the document index as “press release.”	Record attached to a disclosed e- mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
87a	Records identified in the document index as “Berger Transcript,” “Fed/State law doc” and meeting schedule.”	Records attached to a disclosed e- mail.	Exempt as ACD – draft documents.	Draft documents - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
93	E-mail from Rhatican to Cicatiello dated 7/1/06 at 8:44 am.	Contains concerns, queries and opinions.	Not responsive to the Complainant’s request because it is not between CN Communica- tions and Township personnel. Also, exempt as attorney-client privileged and ACD – contains suggestions, opinions, recommenda- tions.	Record is responsive to the Complainant’s request.  Not attorney- client privileged communication.  Contains concerns, queries and opinions regarding a draft document and is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

94	E-mail from Rhatican to Cicatiello, Allen, Funke, Murphy and the Custodian dated 6/29/06 at 8:07 am.	Contains concerns, opinions and recommendations.	Exempt as attorney-client privileged and ACD – contains advice, opinions, recommendations.	Redact the second and third paragraphs. In the fourth paragraph redact everything following the word “information”. Redact the fifth, sixth, and seventh paragraphs. Redact the first sentence in the eighth paragraph. The redacted material contains concerns, opinions and recommendations regarding a draft document and is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . For this reason, it is unnecessary to consider the applicability of the attorney-client privilege as a basis for denial of access (note that no unredacted material left in the record would be subject to such a privilege).
98	E-mail from Cicatiello to Allen, Rhatican, Funke and the	Contains a statement and a suggestion.	Same as explanation for document index item #97.	The Custodian disclosed document index Item #97; therefore this



	Custodian dated 4/6/06 at 3:58 pm.			record shall be disclosed.
98a	Record identified in the document index as "draft talking points."	Record that was attached to document index Item #98.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
100	E-mail from Cicatiello to Shamey, Allen, Rhatican and Funke dated 1/9/06 at 3:16 pm.	Contains opinion	Exempt as ACD – contains opinion.	Redact everything after "Subject:" and redact the body of the letter as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
101	E-mail from Rhatican to Cicatiello, Allen and Shamey dated 1/9/06 at 12:10 pm.	Contains advisory material.	Exempt as ACD – contains opinion, query, thoughts.	Redact everything after "Subject:" and redact the first four sentences in the body of the letter as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
102	E-mail from Funke to Allen, Rhatican, Dube, Staib, Shamey, and Cicatiello dated 5/02/06 at 6:26 pm.	Contains advisory material.	Exempt as ACD – seeks advice, direction.	Redact everything after "Subject:" Redact attachment icon. In the first paragraph redact everything after the word "of." Redact the second and third paragraphs. This is ACD material exempt from

				disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
103a	Record identified in the document index as "Press Release."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
104	E-mail from Funke to Rhatican, Golaszewski, Dube, Staib, Cicatiello, and Murphy dated 4/11/06 at 12:14 pm.	Contains queries and opinions regarding a draft document.	Not responsive to the Complainant's request because it is not between CN Communications and Township personnel. Also, exempt as attorney-client privileged and ACD – contains suggestions, opinions, recommendations.	Record is responsive to the Complainant's request because Rhatican is special counsel to the Township.  Not attorney-client privileged communication.  Redact the line after "Subject:" and redact the line after "Attachments:" Redact the third sentence in the first full paragraph and redact the second and third paragraphs. This is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
105	E-mail from Rhatican to Shamey, Golaszewski,	Contains statements, recommendations,	Exempt as attorney-client privileged and ACD – contains	Redact the line after "Subject:" Redact all numbered

	Funke, Cicatiello, Allen, Gatti, Auriemma, Murphy, Dube, Staib and the Custodian dated 4/11/06 at 11:44 am.	opinions and advice.	advice, opinions on a draft and recommendations.	paragraphs. The redacted material contains opinions and recommendations regarding a draft document and is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . For this reason, it is unnecessary to consider the applicability of the attorney-client privilege as a basis for denial of access (note that no unredacted material left in the record would be subject to such a privilege).
106	E-mail from Shamey to Rhatican, Golaszewski, Funke, Cicatiello, Allen, Gatti, Auriemma, Murphy, Dube, Staib and the Custodian dated 4/10/06 at 11:09 am.	Contains opinions and advice.	Exempt as ACD – contains opinions and comments.	Redact the line after “Subject:” and redact the body of the e-mail as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
107	E-mail from Golaszewski to Shamey Rhatican, Funke, Cicatiello,	Contains opinions and advice.	Not responsive to the Complainant’s request because it is not between CN Communica-	Record is not responsive to the Complainant’s request; therefore the Custodian lawfully denied

	Allen, Gatti, Auriemma, Murphy, Dube, Staib and the Custodian dated 4/10/06 at 5:44 pm.		tions and Township personnel. Also, exempt ACD – contains opinions, seeks advice.	access.
109a	Record identified in the document index as “Internal Discussion Draft.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
110	E-mail from Shamey to Rhatican and Golaszewski dated 4/10/06 at 11:09 am.	Contains query.	Not responsive to the Complainant’s request because it is not between CN Communications and Township personnel. Also, exempt ACD – seeks advice.	Record is not responsive to the Complainant’s request; therefore the Custodian lawfully denied access.
112	E-mail from Allen to Shamey Rhatican, Golaszewski, Cicatiello, Gatti, Auriemma, Dube and the Custodian dated 4/10/06 at 11:09 am.	Contains recommendations and elicits opinions and advice.	Exempt as ACD – contains opinions and seeks comments.	Redact the line after “Subject:” Redact the first full paragraph. This is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
113a	Record identified in the document index as “letter to Residents.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

Interim Order Rendered by the  
Government Records Council  
On The 29<sup>th</sup> Day of October, 2008

Robin Berg Tabakin, Chair  
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: October 30, 2008**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director  
October 29, 2008 Council Meeting**

**Donald Baldwin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2006-165**

**v.**

**Township of Readington<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

- 1) All invoices, paid or unpaid, to Readington Township from CN Communications, International, Inc., (“CN Communications”) for 2005 and 2006, along with the explanation of services rendered. Included in that should be the invoices/expenses that were channeled through the law firm of Connell Foley prior to Readington’s direct retention of CN Communications by separate ordinance.
- 2) Any and all correspondence between Readington Township personnel, at any level, elected or otherwise, and CN Communications, including but not limited to contracts, letters, faxes, e-mails, or memos for 2005 and 2006.

**Request Made:** August 7, 2006

**Response Made:** August 14, 2006

**Custodian:** Vita Mekovetz

**GRC Complaint Filed:** September 7, 2006

**Background**

**April 25, 2007**

Interim Order of the Government Records Council. At the April 25, 2007 public meeting, the Government Records Council (“Council”) considered the April 18, 2007 Executive Director’s Findings and Recommendations and all related documents submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. Therefore, the Council found that:

- 1) The Custodian violated N.J.S.A. 47:1A-5.i. by not granting or denying the Complainant access to the records responsive to the complaint within the statutorily mandated seven (7) business days. The Custodian also failed to obtain a written agreement from the Complainant extending the time in which the Custodian had to fulfill the Complainant’s OPRA request. Paff v. Bergen County Prosecutor’s Office, GRC Complaint No. 2005-115 (March 2006).

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<sup>1</sup> Represented by William L. Ryan, Esq., of Archer & Greiner (Haddonfield, NJ).

<sup>2</sup> Represented by Sharon A. Dragan, Esq., of Ballard & Dragan (Flemington, NJ).

- 2) Regardless of the vagueness of an OPRA request, the Custodian is statutorily mandated to seek clarification for any requests deemed broad or unclear within seven (7) business days. Tucker Kelley v. Rockaway Township, GRC Complaint No. 2006-176 (March 2007).
- 3) It cannot be determined whether the Custodian has met the burden of proving that the requested documents are exempt from disclosure without actually reviewing the documents to confirm the Custodian's legal conclusion. Therefore, it is recommended that the Council conduct an *in camera* inspection of all 175 e-mails to determine whether the documents are exempt from disclosure in whole or in part because of "advisory, consultative or deliberative material" pursuant to N.J.S.A. 47:1a-1.1.
- 4) **The Custodian must deliver<sup>3</sup> to the Council in a sealed envelope six copies of the requested unredacted documents (see #3 above), a document or redaction index detailing the lawful basis for denial of each document and/or each redaction asserted and the Custodian's legal certification, in accordance with N.J. Court Rule 1:4-4, that the documents provided are the documents requested by the Council for the *in camera* inspection within five (5) business days from receipt of the Council's Interim Order.**
- 5) The matter of prevailing parties attorney's fees will be determined after the Council conducts the *in camera* inspection.

#### **April 27, 2007**

Interim Decision and *in camera* letter requesting documents sent to both parties.

#### **May 3, 2007**

Telephone call from the Custodian's Counsel to the GRC. The Custodian requests a five (5) business day extension of time to comply with the terms of the Interim Order.

#### **May 3, 2007**

Fax from the GRC to the Custodian's Counsel. The GRC grants the Custodian a five (5) business day extension of time to comply with the terms of the Interim Order.

#### **May 8, 2007**

Letter from the Complainant's Counsel to the GRC. The Complainant requests a copy of the document index submitted by the Custodian pursuant to the Interim Order.<sup>4</sup>

#### **May 10, 2007**

Letter from the Custodian's Counsel forwarding Certification of the Custodian with the following attachments:

- Six (6) copies of the requested unredacted documents as set forth in paragraph 3 of the Interim Order

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<sup>3</sup> The *in camera* documents 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 by the deadline.

<sup>4</sup> The parties in their submissions refer to the document index as a Vaughn Index. See Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973).

- A document index detailing the lawful basis for denial of each document and/or each redaction asserted

The Custodian identifies the e-mails alpha-numerically. The Custodian numbers the e-mails from one (1) to sixty-three (63); several e-mails are in a string with numerous other attached e-mails that the Custodian identifies with letters.

The Custodian's Counsel states that she received copies of e-mails in December of 2006 that encompassed the period from January of 2006 to the date of the Complainant's request. These e-mails were received from Readington Township's special counsel in on-going litigation and some were between the special counsel and CN Communications only, while other e-mails were between CN Communications and Readington Township ("Township") Committee members upon which the special counsel was copied. Counsel states that these e-mails were not on Township computers, but only on special counsel's computers at the time of the OPRA request. Counsel seeks advice as to whether these e-mails should also be included for *in camera* examination.

#### **May 21, 2007**

Fax from the GRC to the Complainant's Counsel. The document index submitted by the Custodian was forwarded to the Complainant.

#### **May 25, 2007**

Letter from the Complainant's Counsel to the GRC. The Complainant alleges that the additional e-mails referenced by the Custodian's Counsel in her letter to the GRC dated May 10, 2007 should be produced. Complainant's Counsel also contends the Custodian's document index is deficient because it fails to properly identify the e-mail recipients and fails to provide sufficient information relevant to each asserted exception.

#### **May 31, 2007**

Letter from James Rhatican, Esq., of Connell Foley, LLP, to the GRC. One of the attorneys serving as special counsel to the Township of Readington suggests the GRC consider a stay of the complaint pending the resolution of present litigation because he is concerned about the availability of records sought through OPRA that are not otherwise discoverable.

#### **June 5, 2007**

Letter from the Custodian's Counsel to the GRC. The Custodian's Counsel replies to the letter from the Complainant's Counsel dated May 25, 2007. Counsel states she does not believe the document index should have been forwarded to the Complainant's Counsel because Paff v. N.J. Department of Labor, 392 N.J. Super. 334 (App. Div. 2007) requires the document index to be produced to the requesting party after the *in camera* examination. Counsel also contends the document index is not required for routine *in camera* examinations pursuant to Paff, but only when records have been destroyed. Counsel further states that Paff does not mandate the level of specificity alleged to be required by the Complainant. The Custodian also renews her request for guidance, first raised in her May 10, 2007 letter, concerning additional e-mails delivered to her in December 2006.



**June 5, 2007**

Conference call from the GRC to the Custodian's Counsel. The GRC Executive Director replies to questions the Custodian's Counsel raised by letter this date. The Executive Director informs the Custodian's Counsel that the GRC is presently following procedures set forth in the re-proposed new Rules which, when applicable as here, provides for the custodian to deliver to the GRC and to the complainant a certification and a document index.

**June 6, 2007**

Letter from the GRC to the Custodian's Counsel. This letter confirms the June 5, 2007 conference call between the GRC and the Custodian's Counsel.

**June 13, 2007**

Letter from the Custodian's Counsel to the GRC. The Custodian's Counsel requests clarification of the GRC's June 6, 2007 letter.

**June 18, 2007**

Letter from the Complainant to the GRC. The Complainant states that he finds the representations in the letter from James Rhatican, Esq., to the GRC dated May 31, 2007 and those in the letter from the Custodian's Counsel to the GRC of unknown date to be misplaced because they link his complaint with an eminent domain action.

**June 22, 2007**

Letter from the GRC to the Custodian's Counsel. The GRC replies to the letter from the Custodian's Counsel dated June 13, 2007 by advising Counsel that all e-mails responsive to the Complainant's request should either be disclosed to the Complainant or forwarded to the GRC for an *in camera* examination, even if they were recently discovered.

**June 25, 2007**

Conference call from the GRC to James Rhatican, Esq., of Connell Foley, LLP. The Executive Director replies to Mr. Rhatican's letter dated May 31, 2007, advising him that any litigation involving the Township of Readington is a non-issue for the GRC.

**June 26, 2007**

Telephone call from the Custodian's Counsel. The Custodian's Counsel informs the GRC that the Custodian will deliver to the GRC for *in camera* examination all of the additional e-mails referenced in her May 10, 2007 letter that are responsive to the Complainant's request.

**June 27, 2007**

Letter from the Custodian's Counsel forwarding a certification of the Custodian with the following attachments:

- Six (6) copies each of unredacted e-mails and attachments numbered from sixty-five (65) to one hundred thirteen (113) for *in camera* examination<sup>5</sup>

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<sup>5</sup> These records were previously identified as "additional e-mails" received by the Custodian's Counsel in December 2006.

- A document index in two parts detailing the lawful basis for denial of each document and/or each redaction asserted

Counsel states that these e-mails were received from the Township's special counselors James Rhatican, Esq. and Joseph Murphy, Esq., of Connell, Foley, LLP. Counsel states that some of the e-mails are between special counsel and CN Communications only, while other e-mails are between CN Communications and Township Committee members upon which the special counsel was copied. The Custodian's Counsel also states that these e-mails were not maintained by or made available to the Custodian when the Complainant made his OPRA request. Counsel contends the records are exempt from disclosure as either advisory, consultative or deliberative ("ACD") material or attorney-client privileged material, as set forth in the document indices.

### **July 5, 2007**

Telephone call from the Complainant. The Complainant calls to inform the GRC that he objects to the content of the letter dated June 27, 2007 from the Custodian's Counsel to the GRC and that explanatory correspondence will be forthcoming from his attorney.

### **July 6, 2007**

Telephone call from the GRC to Custodian's Counsel. The GRC requests proof that records submitted by the Custodian for *in camera* inspection were delivered to the GRC by the extended deadline date of May 11, 2007.

### **July 9, 2007**

Fax from the Custodian's Counsel to the GRC. The Custodian's Counsel forwarded a Federal Express tracking receipt which indicated a package shipped from Readington Township on May 10, 2007 was received by the GRC on May 11, 2007. The Custodian's Counsel states that the delivered package was the package that was due to the GRC on May 11, 2007.

### **August 2, 2007**

Letter from the GRC to the Custodian's Counsel. The GRC requests the Custodian's Counsel to advise the GRC if there has been a change in circumstances that would allow for disclosure of any records previously withheld from disclosure by the Custodian.

### **August 6, 2007**

Letter from the Complainant's Counsel to the GRC. The Complainant's Counsel contends that the document index submitted by the Custodian is deficient because the subject matter descriptions of the e-mails are insufficient and recipients are not identified with specificity; therefore, Counsel contends the Complainant cannot properly assess the Custodian's basis for redacting records or withholding records from disclosure. Counsel also argues that some of the records responsive to the request have been prematurely discarded in contravention of the Records Destruction Schedule established and approved by the New Jersey Department of State Division of Archives and Records Management ("DARM"). Finally, Counsel asserts the Complainant contends that the e-mails are not subject to an exemption from disclosure as ACD material and that the Custodian's reliance upon the attorney-client privilege exemption to withhold certain records from disclosure does not apply in several instances because the consultant at CN Communications was privy to

attorney-client communications; however, he was not a party to the legal strategy. Counsel concludes from statements made by the consultant in a prior deposition that the consultant was not a party to the legal strategy.<sup>6</sup>

### **August 29, 2007**

Letter from the Custodian's Counsel to the GRC. In reply to the GRC's letter dated August 2, 2007, the Custodian's Counsel informs the GRC that the Custodian will disclose the following records in unredacted form, except for the redaction of e-mail addresses, because they are no longer considered ACD material:

#### Custodian's Document Index #1

1, 3, 4, 4a, 5, 5a, 5b, 6a, 6b, 7, 7a, 7b, 7c, 13, 14, 15a, 17, 17a, 21, 22, 23, 25, 26, 27, 28, 29, 29a, 30, 32, 33, 34, 37, 38, 39, 40, 42, 43, 44, 44a, 45, 46, 48, 49, 50a, 50c, 51, 52a, 52c, 52e, 53, 54, 54a, 54c, 54e, 54g, 55, 56, 61, 62, and 63.

#### Custodian's Document Index #2

64, 68, 69, 70, 72, 74, 78, 79, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91 and 92.

#### Custodian's Document Index #3

94, 95, 97, 99, 103, 108, 109, 111 and 113.

The Custodian's Counsel also states that she has received a copy of the letter from the Complainant's Counsel to the GRC dated August 6, 2007. Counsel contends that the document index which she submitted in three parts is not deficient because it is legally sufficient and was prepared *inter alia* in the most practicable and readable manner. Counsel explains the manner in which the document index was prepared as well as the various abbreviations used by the Custodian. Counsel also states that she has enclosed revised document indices. Counsel asserts that the Custodian has provided additional information to make the indices more comprehensive.

The Custodian's Counsel contends that the records that were discarded were done so in compliance with DARM provisions and that the Custodian, except in a few instances, has denied access to the records or portions thereof because they are ACD material, not attorney-client privileged. Counsel contends that the deliberative process privilege does not expire. Counsel cites New Jerseyans for a Death Penalty Moratorium v. New Jersey Department of Corrections, Docket No. MER-L-1740-02 (Law Div. October 28, 2002) as authority for her contention. Counsel also contends that the courts have recognized that consultants, free of any conflict of interest, may be enough like the agency's own personnel to render their communications inter-agency and cites Department of the Interior and Bureau of Indian Affairs v. Klamath Water Users Protective Association, 523 U.S. 1 (2001) in support thereof. Counsel states that CN Communications provided consulting services to the Township which included discussion and deliberation between CN Communications and Township officials.

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<sup>6</sup>The Complainant's Counsel attached nine (9) pages of a one hundred sixty-one (161) page deposition of Anthony Cicatiello in connection with Township of Readington v. Solberg Aviation, et al., Law Division – Hunterdon County, Docket No. HNT-L-468-06 (date unknown).

Finally, Counsel contends that segments of the records cannot be effectively redacted because individual sentences in the records are inextricably intertwined with the entire document.

### **September 12, 2007**

Letter from the Complainant's Counsel to the GRC. Counsel replies to the letter from the Custodian's Counsel to the GRC dated August 29, 2007. Counsel states that the Custodian's reliance on New Jerseyans for a Death Penalty Moratorium v. New Jersey Department of Corrections, Docket No. MER-L-1740-02 (Law Div. October 28, 2002) is misplaced because that decision has been modified on appeal. Counsel asserts that since many of the e-mail records the Custodian has withheld from disclosure under the ACD exemption are admitted by the Custodian to have been characterized as transient e-mails under DARM provisions, they are by definition not ACD material. Counsel further states it is critical for certain e-mail recipients to be identified in the document index because the deliberative privilege may be affected. Complainant's Counsel further contends that some of the technical claims relied upon by the Custodian to deny access to the requested records, such as the Custodian's assertion in the document index that certain e-mails are exempt because they are part of a string or were not "directed to" Township personnel, are not applicable in this matter. Counsel also states that although the Complainant has no objection to the redaction by the Custodian of e-mail addresses, the Complainant wants the identities of the individuals connected to the addresses to be disclosed.

### **September 12, 2007**

Letter from the Complainant's Counsel to the GRC. Counsel confirms that sixty-seven (67) pages of e-mail records requested by the Complainant have been received by the Complainant. Counsel points out that some of the e-mails were copied to third parties and he provides two (2) such e-mails as attachments.<sup>7</sup>

### **Analysis**

The Custodian contends that the majority of the records submitted for *in camera* examination are exempt from disclosure because they are ACD material. OPRA excludes from the definition of a government record "inter-agency or intra-agency advisory, consultative or deliberative material." 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."

The deliberative process privilege is a doctrine that permits government agencies to withhold documents that reflect advisory opinions, recommendations and deliberations submitted as part of a process by which governmental decisions and policies are formulated. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150, 95 S. Ct. 1504, 1516, 44 L. Ed. 2d 29, 47 (1975). This long-recognized privilege is rooted in the concept that the sovereign has an interest in protecting the integrity of its deliberations. The earliest federal case adopting the privilege is Kaiser Alum. & Chem. Corp. v. United States, 157 F. Supp. 939 (1958). Federal district courts and circuit courts of appeal subsequently adopted the privilege and its

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<sup>7</sup> Other correspondence was submitted by the parties to the GRC that is not relevant to the adjudication of this complaint.

rationale. United States v. Farley, 11 F.3d 1385, 1389 (7th Cir.1993). It has also been codified in the federal Freedom of Information Act (“FOIA”) 5 U.S.C. §552(b) (5).

The deliberative process privilege was discussed at length in In Re Liquidation of Integrity Insurance Co., 165 N.J. 75 (2000). There, the court addressed the question of whether the Commissioner of Insurance, acting in the capacity of Liquidator of a regulated entity, could protect certain records from disclosure which she claimed contained opinions, recommendations or advice regarding agency policy. *Id.* at 81. The court adopted a qualified deliberative process privilege based upon the holding of McClain v. College Hospital, 99 N.J. 346 (1985), Liquidation of Integrity, *supra*, 165 N.J. at 88. In doing so, the court noted that:

“[a] document must meet two requirements for the deliberative process privilege to apply. First, it must have been generated before the adoption of an agency's policy or decision. In other words, it must be pre-decisional. ... Second, the document must be deliberative in nature, containing opinions, recommendations, or advice about agency policies...Purely factual material that does not reflect deliberative processes is not protected...Once the government demonstrates that the subject materials meet those threshold requirements, the privilege comes into play. In such circumstances, the government's interest in candor is the "preponderating policy" and, prior to considering specific questions of application, the balance is said to have been struck in favor of non-disclosure.” (Citations omitted.) *Id.* at 84-85.

The court further set out procedural guidelines based upon those discussed in McClain:

“[t]he initial burden falls on the state agency to show that the documents it seeks to shield are pre-decisional and deliberative in nature (containing opinions, recommendations, or advice about agency policies). Once the deliberative nature of the documents is established, there is a presumption against disclosure. The burden then falls on the party seeking discovery to show that his or her compelling or substantial need for the materials overrides the government's interest in non-disclosure. Among the considerations are the importance of the evidence to the movant, its availability from other sources, and the effect of disclosure on frank and independent discussion of contemplated government policies.” In Re Liquidation of Integrity, *supra*, 165 N.J. at 88, citing McClain, *supra*, 99 N.J. at 361-62, 492 A.2d 991.

In O’Shea v. West Milford Board of Education, GRC Complaint No. 2004-93 (April 2006), the Council stated that “neither the statute nor the courts have defined the terms ‘intra-agency’ or ‘advisory, consultative, or deliberative’ in the context of the public records law. The Council looks to an analogous concept, the deliberative process privilege, for guidance in the implementation of OPRA’s ACD exemption. Both the ACD exemption and the deliberative process privilege enable a governmental entity to shield from disclosure material that is pre-decisional and deliberative in nature. Deliberative material contains opinions, recommendations, or advice about agency policies. Strictly factual segments of an otherwise deliberative document are not exempted from disclosure. In re the Liquidation of Integrity

Insurance Company, 165 N.J. 75, 88 (2000); In re Readoption With Amendments of Death Penalty Regulations, *supra* at 73 (App. Div. 2004).”

The Custodian also contends that many of the records are legally exempt from disclosure because they are attorney-client privileged. OPRA excludes from the definition of a government record “any record within the attorney-client privilege.” However, OPRA also provides that this provision “shall not be construed as exempting from access attorney or consultant bills or invoices except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege.” N.J.S.A. 47:1A-1.1.

In New Jersey, protecting confidentiality within the attorney-client relationship has long been recognized by the courts. *See, e.g. Matter of Grand Jury Subpoenas*, 241 N.J. Super. 18 (App. Div. 1989). In general, the attorney-client privilege renders as confidential communications between a lawyer and a client made in the course of that professional relationship. *See* N.J.S.A. 2A: 84A-20 and *Fellerman v. Bradley*, 99 N.J. 493, 498-99 (1985). Rule 504 (1) of the New Jersey Rules of Evidence provides that communications between a lawyer and client, “in the course of that relationship and in professional confidence, are privileged...” Such communications as discussion of litigation strategy, evaluation of liability, potential monetary exposure and settlement recommendations are considered privileged. *The Press of Atlantic City v. Ocean County Joint Insurance Fund*, 337 N.J. Super. 480, 487 (Law Div. 2000). Also confidential are mental impressions, legal conclusions, and opinions or theories of attorneys. *In Re Environmental Ins. Actions*, 259 N.J. Super. 308, 317 (App. Div. 1992). However, “a fine line exists between an attorney who provides legal services or advice...and one who performs essentially nonlegal duties. An attorney who is not providing legal services or providing legal advice in some form does not qualify as a “lawyer” for purposes of the [attorney-client] privilege...” *Payton v. New Jersey Turnpike Authority*, 148 N.J. 524, 550-551 (1997), citing *United Jersey Bank v. Wolosoff*, 196 N.J. Super. 553, 563 (App. Div. 1984).

The privilege has been extended to any person who is or may be the agent of either the attorney or the client. *See State v. Kociolek*, 23 N.J. 400 (1957). It includes any “necessary intermediaries...through whom the communications are made.” *Id.* at 413. The attorney-client privilege has also been held to be “fully applicable to communications between a public body and an attorney retained to represent it.” *Matter of Grand Jury*, *supra*, 241 N.J. Super. at 28, citing *In Re State Commission of Investigation*, 226 N.J. Super. 461 (App. Div. 1988).

The attorney-client privilege is waived if privileged communications are shared with persons who are not representatives of the client or the attorney; however, to be effective, a waiver of the attorney-client privilege must have been made “with knowledge of [the] right or privilege.” *State v. J.G.*, 261 N.J. Super. 409, 419-21 (App. Div. 1993), cert. denied, 133 N.J. 436 (1993). Inadvertent disclosure through mere negligence or misfortune does not abrogate the attorney-client privilege. *Trilogy Communications, Inc. v. Excom Realty, Inc.*, 279 N.J. Super. 442, 445 (Law Div. 1994). *See generally, State v. Davis*, 116 N.J. 341, 362-63 (1989).

In this matter the Custodian did not always identify the submitted records as those responsive to the Complainant’s request. In fact, the Custodian submitted some records and

certified that they were lawfully withheld from disclosure because they were not responsive to the Complainant's request. This issue of whether certain records were exempt because they were not "directed to" an actionable party became a point of controversy between the parties to this complaint. The Complainant requested "any and all correspondence between Readington Township personnel, at any level, elected or otherwise, and CN Communications."

Accordingly, no distinction will be made between the parties the e-mail is sent to or the parties to whom the e-mail is copied; both will be considered recipients because they are being equally noticed by the communication. Further, all identified senders and receivers will be considered by the GRC in determining whether the record under examination is responsive to the Complainant's request as "correspondence between" the parties. If one or more parties as sender and one or more parties as recipient are either CN Communications or Township personnel, the record will be considered responsive to the Complainant's request.<sup>8</sup>

The Complainant's Counsel contends that the document index submitted by the Custodian in this matter is deficient; however, the document index along with the "Key to the Vaughn Index" was found by the GRC to be legally sufficient to satisfy the court's mandate in Paff, supra.

Pursuant to the assent of the Complainant to the Custodian's proposal, all e-mail addresses shall be redacted; however, the name of each party corresponding to a redacted e-mail address shall be disclosed.

The GRC conducted an *in camera* examination of the records set forth in Paragraph 3 of the Council's April 25, 2007 Interim Order numbered one (1) to sixty-three (63) as well as the records which were in the possession of the Township's special counsel and determined to be responsive to the Complainant's request numbered sixty-five (65) to one hundred thirteen (113). The results of the *in camera* examination are set forth in the following table:

<b>Record Number</b>	<b>Record Name/Date</b>	<b>Description of Record</b>	<b>Custodian's Explanation/ Citation for Non-disclosure or Redactions</b>	<b>Findings of the <i>In Camera</i> Examination</b>
2	E-mail from Jonathan Funke, CN	Contains opinions regarding a	Exempt as ACD - entire document consists of	Redact: The second and third sentences in

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<sup>8</sup> The Township's special counsel appeared repeatedly as a sender or receiver of the e-mails responsive to the Complainant's request. Many e-mails were signed by special counsel in counsel's capacity as an attorney, often on law firm stationery. Special counsel was also depended upon by CN Communications personnel to provide input to their organization in order for CN Communications to better serve the Township, and special counsel actively and willingly participated. By acting in such capacity, the GRC considers e-mails to and from (and copied to) special counsel to be responsive to the Complainant's request.

	Communications to Julia Allen, Township Committee member (“Allen”); Frank Gatti, Township Official (“Gatti”); Tom Auriemma, Township Committee member (“Auriemma”); Jay Rhatican, special counsel (“Rhatican”); Joseph Murphy, special counsel (“Murphy”); Anthony Cicatiello, CN Communications consultant (“Cicatiello”); and the Custodian dated 2/7/06 at 5:32 pm.	record identified in the document index as a “draft letter.”	opinions on draft letter, strategy.	the first paragraph. <sup>9</sup> The second paragraph. The second sentence in the third paragraph. The second sentence in the fourth paragraph. The fifth paragraph. This is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
2a	E-mail from Allen to Gatti, Auriemma, Cicatiello, Rhatican, Funke, Murphy and the Custodian dated 2/7/06 at 5:13 pm.	Contains query.	Exempt as ACD – poses question with suggestion and opinion.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
3a	Same record as #2.	Same description as #2.	Same explanation/citation for	Same finding as #2.

<sup>9</sup> Any group of words set off by indentation, bullets, numbering, extra space or a similar separation device is considered a separate paragraph for *in camera* examination purposes. The salutation and closing are not considered paragraphs.



			non-disclosure as #2.	
3b	Same record as #2a.	Same description as #2a.	Same explanation/ citation for non-disclosure as #2a.	Same finding as #2a.
4b	Same record as #2.	Same description as #2.	Same explanation/ citation for non-disclosure as #2.	Same finding as #2.
4c	Same record as #2a.	Same description as #2a.	Same explanation/ citation for non-disclosure as #2a.	Same finding as #2a.
5c	Same record as #2.	Same description as #2.	Same explanation/ citation for non-disclosure as #2.	Same finding as #2.
5d	Same record as #2a.	Same description as #2a.	Same explanation/ citation for non-disclosure as #2a.	Same finding as #2a.
6	E-mail from Funke to the Custodian dated 2/8/06 at 4:48 pm.	Contains opinion and recommendations.	Exempt as ACD – contains opinion, discussion, seeks direction.	Redact the line after “Subject:” Disclose first paragraph [five ( 5) words] and redact balance of record as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
7d	Same record as #2.	Same description as #2.	Same explanation/ citation for non-disclosure as #2.	Same finding as #2.
7e	Same record as #2a.	Same description as #2a.	Same explanation/ citation for non-disclosure as	Same finding as #2a.

			#2a.	
8	E-mail from Funke to Allen, Gatti, Auriemma, Cicatiello, Rhatican and the Custodian dated 2/9/06 at 4:34 pm.	Contains opinion and statements.	Exempt as ACD - contains opinions.	Redact second sentence of first paragraph as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
9	E-mail from Allen to Gatti, Auriemma, Rhatican, Funke, and the Custodian dated 2/7/06 at 5:13 pm.	Contains statements.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
10	E-mail from Funke to Allen, Gatti, Auriemma, Cicatiello, Rhatican and the Custodian dated 2/9/06 at 5:15 pm.	Contains opinions and recommendations.	Exempt as ACD.	Redact paragraph beginning with "Basically" and paragraph beginning with "Nothing" (middle two paragraphs) as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
10a	Same record as #9.	Same description as #9.	Same explanation/citation for non-disclosure as #9.	Same finding as #9.
10b	Record identified in the document index as "Attachment to 10a."	Record that was attached to document index Item #10a.	Exempt as ACD – draft for review.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

11	E-mail from the Custodian to Funke, Allen, Gatti, Auriemma, Cicatiello, and Rhatican dated 2/9/06 at 5:53 pm.	Contains inquiry and statements.	Exempt as ACD – seeks direction.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD. If the cell phone is personal property, the phone number may be redacted pursuant to the provisions of <u>N.J.S.A. 47:1A-1.1</u> .
11a	Same record as #10.	Same description as #10.	Same explanation/citation for non-disclosure as #10.	Same finding as #10.
11b	Same record as #9.	Same description as #9.	Same explanation/citation for non-disclosure as #9.	Same finding as #9.
12	E-mail from Funke to Allen, Gatti, Auriemma, Cicatiello, Rhatican and the Custodian dated 2/10/06 at 3:28 pm.	Contains statements and seeks cooperation.	Exempt as ACD – seeks direction.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
12a	Record identified in the document index as “Attachment to 10a.”	Record that was attached to document index Item #10a.	Exempt as ACD – draft for review.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
15	E-mail from Allen to Gatti, Auriemma, Funke, Gerald Shamey, Mayor	Contains opinions and recommendations.	Exempt as ACD.	Redact sentence beginning with “First Para.” and sentence beginning with

	("Shamey") and the Custodian dated 2/13/06 at 1:18 pm.			"second para." as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
16	E-mail from Funke to the Custodian dated 2/27/06 at 12:29 pm.	Transmittal forwarding attachment.	Exempt as ACD – advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
16a	Record identified in the document index as "Draft Letter."	Record that was attached to document index Item #16.	Exempt as ACD – draft. Custodian also notes that this letter was made available to the public immediately.	Disclose – not ACD material. Because the Custodian certifies that the letter was immediately released to the public, it is the final version and no longer a draft; therefore the record shall be disclosed.
18	Record identified in the document index as "FAQ."	FAQ	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
19	E-mail from Funke to Allen, Gatti, Shamey, Auriemma, Cicatiello, Rhatican, Murphy, Vanessa Dube, CN Communica-	Transmittal forwarding attachment. Contains advice.	Exempt as ACD – contains opinion on draft position paper.	Redact everything in the second sentence of the first paragraph between the words "on the" and "but this" as ACD material exempt from disclosure pursuant to

	tions consultant (“Dube”); Roger Staib, CN Communications consultant (“Staib”); Rich Golaszewski, GRA, Inc., outside party (“Golaszewski”) and the Custodian dated 4/11/06 at 12:34 pm.			<u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
20	E-mail from Funke to Allen, Gatti, Shamey, Auriemma, Cicatiello, Rhatican, Murphy, Dube, Staib, Golaszewski, and the Custodian dated 4/10/06 at 5:05 pm.	Transmittal forwarding attachment.	Exempt as ACD – requests opinion/advice on draft position paper.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
20a	Document identified in the document index as “FAQ.”	Record that was attached to document index Item #20.	Exempt as ACD.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
23a	Document identified in the document index as “Meeting schedule.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
24	E-mail from Cicatiello to Funke, Allen, Gatti, Shamey, Auriemma, Rhatican,	Contains statements and seeks cooperation.	Exempt as ACD – seeks advice on draft document.	Redact last sentence in the only full paragraph. as ACD material exempt from

	Murphy, Dube, Staib, and the Custodian dated 4/10/06 at 5:05 pm.			disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
24a	Document identified in the document index as “position letter.”	Record that was attached to document index Item #24.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
24b	Document identified in the document index as “suggested meeting dates.”	Record that was attached to document index Item #24.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
25a	Record identified in the document index as “Transcript.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
25b	Record identified in the document index as “Fed/State Role.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
26a	Record identified in the document index as “Schedule of Meetings.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
27a	Record identified in the document index as “mayor letter.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

27b	Record identified in the document index as "Schedule of Meetings."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
31	E-mail from Cicatiello to Royal Printing Company and the Custodian dated 4/19/06 at 2:22 pm.	Transmittal contains statement.	Not responsive to the Complainant's request because it is not between CN Communications and Township personnel. Also, exempt as ACD.	Record is responsive to the Complainant's request because the Custodian is a Township official.  Redact words in quotation marks as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
33a	Record identified in the document index as "FAQ."	Record attached to a disclosed e-mail.	Exempt as ACD: pre-decisional.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
34a	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
35	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
36	Record identified in the document index	Record attached to a disclosed e-	Exempt as ACD – draft document.	Draft document - ACD material exempt from

	as "Transcript."	mail.		disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
37a	Record identified in the document index as "ballot question."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
38	Record identified in the document index as "Transcript."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41	E-mail from Staib to Dube, Cicatiello and Funke dated 5/1/06 at 7:06 am.	Contains statements and opinions.	Not responsive to the Complainant's request because it is between CN Communication consultants. Also, exempt as ACD.	Record is not responsive to the Complainant's request; therefore the Custodian lawfully denied access.
41a	Record identified in the document index as "Technical Note."	Record that was attached to document index Item #41.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41b	Record identified in the document index as "FAQ."	Record that was attached to document index Item #41.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41c	Record identified in the document index as "Transcript."	Record that was attached to document index Item #41.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to



				<u>N.J.S.A. 47:1A-1.1.</u>
41d	Record identified in the document index as “Fed/State Role.”	Record that was attached to document index Item #41.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41e	Record identified in the document index as “Meeting Schedule.”	Record that was attached to document index Item #41.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
41f	Record identified in the document index as “Technical Note.”	Record that was attached to document index Item #41.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
44b	Record identified in the document index as “Attachment to 44a.”	Record that was attached to a disclosed e-mail.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
45a	Record identified in the document index as “proposed master plan cover.”	Record that was attached to a disclosed e-mail.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
45b	Record identified in the document index as “graphic.”	Record that was attached to a disclosed e-mail.	Exempt as ACD - draft.	Draft document - ACD material exempt from disclosure pursuant to

				<u>N.J.S.A. 47:1A-1.1.</u>
47	E-mail from Staib to the Custodian dated 5/2/06 at 12:50 pm.	Contains recommendation, statements and opinions.	Exempt as ACD – contains advice, opinions, recommendations.	Redact the line after “Subject:” Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> , except for the last paragraph.
50	E-mail from Staib to the Custodian dated 5/2/06 at 1:30 pm.	Contains advice.	Exempt as ACD – requests advice, opinion, recommendation.	Redact everything within quotation marks in the second sentence and redact the third sentence in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of the record.
50b	E-mail from Staib to the Custodian dated 5/2/06 at 12:50 pm.	Contains recommendation, statements and opinions.	Exempt as ACD – contains suggestions and recommendations.	Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> , except for the last paragraph. Disclose balance of record.
52	E-mail from Staib to the Custodian dated 5/2/06 at 1:53 pm.	Contains recommendations.	Exempt as ACD – contains advice, opinions, recommendations.	Redact everything in the body of the correspondence as ACD material exempt from

				disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
52b	E-mail from Staib to the Custodian dated 5/2/06 at 1:30 pm.	Contains advice.	Exempt as ACD – requests advice, opinion, recommendation.	Redact everything within quotation marks in the second sentence and redact the third sentence in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of the record.
52d	E-mail from Staib to the Custodian dated 5/2/06 at 12:50 pm.	Contains recommendation, statements and opinions.	Exempt as ACD – contains advice, opinions, recommendations.	Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> , except for the last paragraph. Disclose balance of record.
54b	E-mail from Staib to the Custodian dated 5/2/06 at 1:53 pm.	Contains recommendations.	Exempt as ACD – contains advice, opinions, recommendations.	Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
54d	E-mail from Staib to the Custodian dated 5/2/06 at 1:30 pm.	Contains advice.	Exempt as ACD – requests advice, opinion, recommendation.	Redact everything within quotation marks in the second sentence and redact the

				third sentence in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of the record.
54f	E-mail from Staib to the Custodian dated 5/2/06 at 12:50 pm.	Contains recommendation, statements and opinions.	Exempt as ACD – contains advice, opinions, recommendations.	Redact everything in the body of the correspondence as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> , except for the last paragraph. Disclose balance of record.
57	E-mail from Funke to Allen, Cicatiello and the Custodian dated 5/9/06 at 10:49 pm.	Contains statements regarding the attached final FAQ.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
57a	Record identified in the document index as “FAQ.”	Record that was attached to document index Item #57.	Exempt as ACD – draft document.	Document index Item #57 states that this attachment to document index Item #57 is the final FAQ; however, the Custodian certifies that this item is a draft of FAQ. Accordingly, because the Custodian certifies that the record is a draft of

				FAQ, it is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
58	E-mail from Funke to Allen, Cicatiello and the Custodian dated 5/9/06 at 10:49 pm.	Contains statements regarding the attached final FAQ.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
58a	Record identified in the document index as "FAQ."	Record that was attached to document index Item #57.	Exempt as ACD – draft document.	Document index Item #57 states that this attachment to document index Item #57 is the final FAQ; however, the Custodian certifies that this item is a draft of FAQ. Accordingly, because the Custodian certifies that the record is a draft of FAQ, it is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
59	E-mail from Funke to Cicatiello and the Custodian dated 7/11/06 at 3:41 pm.	Contains statements.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
59a	Record identified in the document index	Record that was attached to document	Exempt as ACD – draft document.	Draft document - ACD material exempt from

	as “statement for Mayor.”	index Item #59.		disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
60	E-mail from Funke to Cicatiello and the Custodian dated 7/11/06 at 3:41 pm.	Contains statements.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
60a	Record identified in the document index as “statement for Mayor.”	Record that was attached to document index Item #59.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
61a	E-mail from Funke to Cicatiello and the Custodian dated 7/11/06 at 3:41 pm.	Contains statements.	Exempt as ACD - advisory.	Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
61b	Record identified in the document index as “statement for Mayor.”	Record that was attached to document index Item #59.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
63a	Record identified in the document index as “power point presentation.”	Record that could be an attachment to disclosed e-mail (re: document index Item #63).	Exempt as ACD – appear to be drafts.	Custodian certifies that she is not sure this is the correct attachment to document index Item #63. It appears it is not the correct attachment because document index Item #63

				<p>references the subject as “newsletter copy with edits.” Further, the Custodian is also not certain if the attachment is a draft or not because she certifies that the record appears to be a draft. Because the Custodian cannot certify to a certainty that this record is a draft document, or even the proper attachment to the record responsive to the Complainant’s request, it is not ACD material; therefore, the record shall be disclosed.</p>
64a	Record identified in the document index as “Strategy Memo.”	Four (4) page memorandum containing five (5) subheadings. Each subheading is set off in bold and underlined.	Exempt as ACD – contains suggestions, opinions, recommendations.	<p>The following ACD material is exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u>:</p> <p>Second subheading, second paragraph, last sentence. Redact everything after the word “happen.” Second subheading, third paragraph consisting of one sentence. Redact everything after</p>

				<p>the word “perspective.” Second subheading, fourth paragraph, redact last two sentences. Second subheading, last paragraph, redact first sentence. Third subheading, redact first three paragraphs. Third subheading, fourth paragraph, redact first sentence and redact everything in second sentence after the word “development” through the end of the paragraph. Third subheading, fifth paragraph, redact second sentence. Redact sixth paragraph. Fourth subheading, redact first six paragraphs. Fourth subheading, seventh paragraph, redact first and last sentences. Fifth subheading, redact first paragraph. Fifth subheading, second paragraph, first sentence, redact everything after the word “Monday” through the end of the sentence.</p>
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65	E-mail from Funke to Michael Simon, outside party ("Simon"), Allen, Gatti, Rhatican, Golaszewski, Murphy, Shamey, Cicatiello, and dmzusmc1, outside party ("dmzusmc"), dated 1/13/06 at 4:23 pm.	Transmittal forwarding attachment.	Exempt as ACD – contains suggestions, seeks opinions.	Redact the first sentence in the second paragraph in the body of the e-mail as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
65a	Record identified in the document index as "Internal Draft – do not circulate."	Record that was attached to document index Item #65.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
66	E-mail from Cicatiello to Shamey, Rhatican, Murphy, and the Custodian dated 1/19/06 at 2:50 pm.	Contains statements and advice.	Exempt as ACD - advisory.	Redact identification of attachment. Redact first three sentences in body of e-mail. Disclose balance of record.
66a	Record identified in the document index as "draft letter."	Record that was attached to document index Item #65.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
67	E-mail from Cicatiello to Shamey, Gatti, Allen, Auriemma, Rhatican, Simon, Funke, Murphy, and	Contains statements.	Exempt as ACD – contains suggestions, opinions.	Redact identification of attachment. Redact first three sentences in body of e-mail. Disclose balance of record.

	the Custodian dated 1/20/06 at 4:18 pm.			
67a	Record identified in the document index as "community letter."	Record that was attached to document index Item #67.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
69a	Record identified in the document index as "Attachment to #69."	Record that was attached to a disclosed e-mail.	No explanation/citation for non-disclosure. The Custodian states that it "[a]ppears to be the final document."	Disclose record.
71	E-mail from Cicatiello to Shamey, Gatti, Allen, Auriemma, Rhatican, Dube, Funke, Murphy, and the Custodian dated 2/3/06 at 5:06 pm.	Contains recommendations, opinions and advice.	Exempt as attorney-client privileged and ACD – seeks advice; contains recommendation sraft document.	Not attorney-client privileged communication.  Redact second and third paragraphs within the body of the e-mail which contain advisory information and are ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
71a	Record identified in the document index as "Final Mayor's Draft Statement."	Statement.	Exempt as attorney-client privileged and ACD – for discussion.	Not attorney-client privileged communication.  Documents for discussion are not necessarily ACD material exempt from disclosure under OPRA. Because the

				Custodian certifies this is the final draft and she does not provide any other legal reason to deny access, the record shall be disclosed.
72a-1	Record identified in the document index as "Final Mayor's Draft Statement."	Record attached to a disclosed e-mail.	No explanation/citation for non-disclosure.	Disclose.
72a-2	Record identified in the document index as "Final Mayor's Draft Statement."	Record attached to a disclosed e-mail.	No explanation/citation for non-disclosure.	Disclose.
73	E-mail from Cicatiello to Shamey, Gatti, Allen, Auriemma, Rhatican, Murphy, and the Custodian dated 2/21/06 at 11:27 am.	Contains statements and a recommendation on strategy.	Exempt as attorney-client privileged and ACD – contains recommendations, opinions.	Not attorney-client privileged communication.  Redact last sentence in the body of the e-mail which contains advisory information and is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
73a (1-16)	Record identified in the document index as "power point presentation."	Record that was attached to document index Item #73.	No legal reason or citation for non-disclosure.	Document index Item #73 states that this attachment to document index Item #73 is the final [draft]. Although the

				Custodian certifies that this item is a “draft power point presentation,” she fails to cite any OPRA provision for denying access. Accordingly, the record shall be disclosed.
75	E-mail from Cicatiello to Shamey, Gatti, Allen, Auriemma, Rhatican, Murphy, and Funke dated 2/24/06 at 4:34 pm.	Transmittal e-mail that contains statements and recommendations.	Exempt as attorney-client privileged and ACD – seeks advice.	Not attorney-client privileged communication.  Redact third and fourth sentence in the body of the e-mail which contains ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
75a	Record identified in the document index as “draft letter.”	Record that was attached to document index Item #75.	Exempt as attorney-client privileged and ACD – – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
76	E-mail from Cicatiello to Shamey, Allen, Auriemma, Rhatican, Murphy, Funke and the Custodian	Contains statements.	Exempt as attorney-client privileged and ACD – contains opinions and recommendations.	Not attorney-client privileged communication.  Disclose: Does not contain opinions, recommendations,

	dated 3/6/06 at 12:27 pm.			or advice about agency policies; therefore, it is not ACD.
76a	Record identified in the document index as "strategy memo."	Record that was attached to document index Item #76.	Exempt as attorney-client privileged and ACD – contains strategy, opinions recommendation and advice.	ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
77	E-mail from Cicatiello to Shamey, Allen, Auriemma, Rhatican, Murphy, Funke and the Custodian dated 3/9/06 at 12:32 pm.	Contains statements.	Exempt as attorney-client privileged and ACD – advisory.	Not attorney-client privileged communication.  Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
77a	Record identified in the document index as "draft letter to Solberg Aviation."	Record that was attached to document index Item #77.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
78a1-2	Record identified in the document index as "letter to Residents."	Record attached to a disclosed e-mail.	Exempt as attorney-client privileged and ACD – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
79a1-2	Record identified in the document index as "letter to	Record attached to a disclosed e-mail.	Exempt as attorney-client privileged and ACD – draft	Not attorney-client privileged communication.

	Residents.”		document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
80	E-mail from Cicatiello to Dube, Allen, Staib, Rhatican, Murphy, and Funke dated 4/6/06 at 1:31 pm.	Statement.	Exempt as attorney-client privileged and ACD – seeks advice.	Not attorney-client privileged communication.  Disclose: Does not contain opinions, recommendations, or advice about agency policies; therefore, it is not ACD.
80a	Record identified in the document index as “FAQ.”	Record that was attached to document index Item #80.	Exempt as attorney-client privileged and ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
81	E-mail from Cicatiello to Shamey, Gatti, Auriemma, Dube, Allen, Staib, Rhatican, Murphy, Funke and the Custodian dated 4/6/06 at 3:58 pm.	Contains statements and advice.	Exempt as attorney-client privileged and ACD – contains opinions, seeks advice.	Not attorney-client privileged communication.  Redact first two sentences in the body of the e-mail which contains ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
81a	Record identified in the document index as “FAQ.”	Record that was attached to document index Item	Exempt as attorney-client privileged and ACD – draft	Not attorney-client privileged communication.

		#81.	document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
82a	Record identified in the document index as "FAQ."	Record attached to a disclosed e-mail.	Exempt as attorney-client privileged and ACD – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
83a	Record identified in the document index as "FAQ."	Record attached to a disclosed e-mail.	Exempt as attorney-client privileged and ACD – draft document.	Not attorney-client privileged communication.  Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
84a	Record identified in the document index as "press release."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
85a	Record identified in the document index as "press release."	Record attached to a disclosed e-mail.	The Custodian references this record as a draft being the same as 84a. Document index Item 84a certified the	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

			record was exempt as ACD – draft document.	
86a	Record identified in the document index as “press release.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
87a	Records identified in the document index as “Berger Transcript,” “Fed/State law doc” and meeting schedule.”	Records attached to a disclosed e-mail.	Exempt as ACD – draft documents.	Draft documents - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
93	E-mail from Rhatican to Cicatiello dated 7/1/06 at 8:44 am.	Contains concerns, queries and opinions.	Not responsive to the Complainant’s request because it is not between CN Communications and Township personnel. Also, exempt as attorney-client privileged and ACD – contains suggestions, opinions, recommendations.	Record is responsive to the Complainant’s request.  Not attorney-client privileged communication.  Contains concerns, queries and opinions regarding a draft document and is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
94	E-mail from Rhatican to Cicatiello, Allen, Funke, Murphy and the Custodian	Contains concerns, opinions and recommendations.	Exempt as attorney-client privileged and ACD – contains advice, opinions, recommenda-	Redact the second and third paragraphs. In the fourth paragraph redact everything following the



	dated 6/29/06 at 8:07 am.		tions.	word “information”. Redact the fifth, sixth, and seventh paragraphs. Redact the first sentence in the eighth paragraph. The redacted material contains concerns, opinions and recommendations regarding a draft document and is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-</u> 1.1. For this reason, it is unnecessary to consider the applicability of the attorney-client privilege as a basis for denial of access (note that no unredacted material left in the record would be subject to such a privilege).
98	E-mail from Cicatiello to Allen, Rhatican, Funke and the Custodian dated 4/6/06 at 3:58 pm.	Contains a statement and a suggestion.	Same as explana- tion for document index item #97.	The Custodian disclosed document index Item #97; therefore this record shall be disclosed.
98a	Record identified in the document index as “draft talking points.”	Record that was attached to document index Item #98.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to

				<u>N.J.S.A. 47:1A-1.1.</u>
100	E-mail from Cicatiello to Shamey, Allen, Rhatican and Funke dated 1/9/06 at 3:16 pm.	Contains opinion	Exempt as ACD – contains opinion.	Redact everything after “Subject:” and redact the body of the letter as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
101	E-mail from Rhatican to Cicatiello, Allen and Shamey dated 1/9/06 at 12:10 pm.	Contains advisory material.	Exempt as ACD – contains opinion, query, thoughts.	Redact everything after “Subject:” and redact the first four sentences in the body of the letter as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
102	E-mail from Funke to Allen, Rhatican, Dube, Staib, Shamey, and Cicatiello dated 5/02/06 at 6:26 pm.	Contains advisory material.	Exempt as ACD – seeks advice, direction.	Redact everything after “Subject:” Redact attachment icon. In the first paragraph redact everything after the word “of.” Redact the second and third paragraphs. This is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u> Disclose balance of record.
103a	Record identified in the document index as “Press Release.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to

				<u>N.J.S.A. 47:1A-1.1.</u>
104	E-mail from Funke to Rhatican, Golaszewski, Dube, Staib, Cicatiello, and Murphy dated 4/11/06 at 12:14 pm.	Contains queries and opinions regarding a draft document.	Not responsive to the Complainant's request because it is not between CN Communications and Township personnel. Also, exempt as attorney-client privileged and ACD – contains suggestions, opinions, recommendations.	Record is responsive to the Complainant's request because Rhatican is special counsel to the Township.  Not attorney-client privileged communication.  Redact the line after "Subject:" and redact the line after "Attachments:" Redact the third sentence in the first full paragraph and redact the second and third paragraphs. This is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
105	E-mail from Rhatican to Shamey, Golaszewski, Funke, Cicatiello, Allen, Gatti, Auriemma, Murphy, Dube, Staib and the Custodian dated 4/11/06 at 11:44 am.	Contains statements, recommendations, opinions and advice.	Exempt as attorney-client privileged and ACD – contains advice, opinions on a draft and recommendations.	Redact the line after "Subject:" Redact all numbered paragraphs. The redacted material contains opinions and recommendations regarding a draft document and is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-</u>

				1.1. For this reason, it is unnecessary to consider the applicability of the attorney-client privilege as a basis for denial of access (note that no unredacted material left in the record would be subject to such a privilege).
106	E-mail from Shamey to Rhatican, Golaszewski, Funke, Cicatiello, Allen, Gatti, Auriemma, Murphy, Dube, Staib and the Custodian dated 4/10/06 at 11:09 am.	Contains opinions and advice.	Exempt as ACD – contains opinions and comments.	Redact the line after “Subject:” and redact the body of the e-mail as ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
107	E-mail from Golaszewski to Shamey Rhatican, Funke, Cicatiello, Allen, Gatti, Auriemma, Murphy, Dube, Staib and the Custodian dated 4/10/06 at 5:44 pm.	Contains opinions and advice.	Not responsive to the Complainant’s request because it is not between CN Communications and Township personnel. Also, exempt ACD – contains opinions, seeks advice.	Record is not responsive to the Complainant’s request; therefore the Custodian lawfully denied access.
109a	Record identified in the document index as “Internal Discussion Draft.”	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

110	E-mail from Shamey to Rhatican and Golaszewski dated 4/10/06 at 11:09 am.	Contains query.	Not responsive to the Complainant's request because it is not between CN Communications and Township personnel. Also, exempt ACD – seeks advice.	Record is not responsive to the Complainant's request; therefore the Custodian lawfully denied access.
112	E-mail from Allen to Shamey Rhatican, Golaszewski, Cicatiello, Gatti, Auriemma, Dube and the Custodian dated 4/10/06 at 11:09 am.	Contains recommendations and elicits opinions and advice.	Exempt as ACD – contains opinions and seeks comments.	Redact the line after "Subject:" Redact the first full paragraph. This is ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> . Disclose balance of record.
113a	Record identified in the document index as "letter to Residents."	Record attached to a disclosed e-mail.	Exempt as ACD – draft document.	Draft document - ACD material exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

### **Conclusions and Recommendations**

The Executive Director respectfully recommends that the Council find that:

1. The Custodian has complied with the Council's April 25, 2007 Interim Order by providing the Council with all records set forth in Paragraph 3 of the Order within five (5) business days of receiving the Council's Order, as extended.
2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and provide certified confirmation of compliance pursuant to N.J. Court Rules, R. 1:4-4 (2005) to the Executive Director.**

Prepared By: John E. Stewart  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

October 22, 2008



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

VINCENT P. MALTESE, Chairman  
COMMISSIONER SUSAN BASS LEVIN  
ACTING COMMISSIONER LUCILLE DAVY  
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**INTERIM ORDER**

**April 25, 2007 Government Records Council Meeting**

Donald Baldwin  
Complainant

Complaint No. 2006-165

v.

Township of Readington  
Custodian of Record

At the April 25, 2007 public meeting, the Government Records Council ("Council") considered the April 18, 2007 *In Camera* 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 violated N.J.S.A. 47:1A-5.i. by not granting or denying the Complainant access to the records responsive within the statutorily mandated seven (7) business days. The Custodian also failed to obtain a written agreement from the Complainant extending the time in which the Custodian had to fulfill the Complainant's OPRA request. Paff v. Bergen County Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006).
- 2) Regardless of the vagueness of an OPRA request, the Custodian is statutorily mandated to seek clarification for any requests deemed broad or unclear within seven (7) business days. Tucker Kelley v. Rockaway Township, GRC Complaint No. 2006-176 (March 2007).
- 3) It cannot be determined whether the Custodian has met the burden of proving that the requested documents are exempt from disclosure without actually reviewing the documents to confirm the Custodian's legal conclusion. Therefore, it is recommended that the Council conduct an *in camera* inspection of all 175 e-mails to determine whether the documents are exempt from disclosure in whole or in part because of "advisory, consultative or deliberative material" pursuant to N.J.S.A. 47:1a-1.1.
- 4) **The Custodian must deliver<sup>1</sup> to the Council in a sealed envelope six copies of the requested unredacted documents (see #3 above), a documents or redactions index detailing the lawful basis for denial of each document**

<sup>1</sup> The *in camera* documents 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 by the deadline.



**and/or each redaction asserted and the Custodian's legal certification, in accordance with N.J. Court Rule 1:4-4, that the documents provided are the documents requested by the Council for the *in camera* inspection within five (5) business days from receipt of the Council's Interim Order.**

- 5) The matter of prevailing parties attorney's fees will be determined after the Council conducts the *in camera* inspection.

Interim Order Rendered by the  
Government Records Council  
On The 25<sup>th</sup> Day of April, 2007

Vincent P. Maltese, Chairman  
Government Records Council

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

Robin Berg Tabakin, Secretary  
Government Records Council

**Decision Distribution Date: April 28, 2007**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 25, 2007 Council Meeting**

**Donald Baldwin<sup>1</sup>  
Complainant**

**GRC Complaint No. 2006-165**

**v.**

**Township of Readington<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

- 1) All invoices, paid or unpaid, to Readington Township from CN Communications, International, Inc., ("CN Communications") for 2005 and 2006, along with the explanation of services rendered. Included in that should be the invoices/expenses that were channeled through the law firm of Connell Foley, prior to Readington's direct retention of CN Communications by separate ordinance.
- 2) Any and all correspondence between Readington Township personnel, at any level, elected or otherwise, and CN Communications, including but not limited to, contracts, letters, faxes, e-mails, or memos for 2005 and 2006.

**Request Made:** August 7, 2006

**Response Made:** August 14, 2006

**Custodian:** Vita Mekovetz

**GRC Complaint Filed:** September 7, 2006

**Background**

**August 7, 2006**

Complainant's Open Public Records Act ("OPRA") request. The Complainant submits his OPRA request on an OPRA form requesting access to the documents listed above.

**August 14, 2006**

Letter from Custodian to Complainant. Five (5) business days after the Complainant's OPRA request was submitted, the Custodian sends the Complainant copies of the invoices from CN Communications from 2005-2006, to date, along with a copy of the Professional Services Contract. The Custodian informs that Complainant that the total cost for these documents is \$13.00. At this time, the Custodian informs the Complainant that the remainder of the records responsive to his August 7, 2006 OPRA request may not be readily available. The Custodian informs the Complainant that the Complainant will be contacted shortly regarding the remaining records responsive.

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<sup>1</sup> Represented by William L. Ryan of Archer & Greiner (Haddonfield, NJ).

<sup>2</sup> Represented by Sharon A. Dragan of Ballard & Dragan (Flemington, NJ).

**August 31, 2006**

Letter from Custodian to Complainant. Nineteen (19) business days after the Complainant's OPRA request was submitted, the Custodian informs the Complainant that the remaining records responsive are still being reviewed. The Custodian informs the Complainant that he will be contacted when the review is complete.

**September 7, 2006**

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

- Letter from Complainant to Custodian dated August 2, 2006,
- Letter from Custodian to Complainant dated August 14, 2006,
- Letter from Custodian to Complainant dated August 31, 2006,
- Bills from CN Communications that were provided to Complainant by Custodian in response to Complainant's August 7, 2006 OPRA request.

In a letter to the GRC, the Complainant asserts that the actions of the Custodian violate OPRA. The Complainant declares that on August 2, 2006, he forwarded a letter requesting copies of public documents to the attention of the Custodian, clearly stating the exact nature of the request, as well as an authorization to bill the Complainant up to \$50.00 for copying costs associated with this OPRA request. The Complainant further asserts that on August 14, 2006, the Complainant received a voicemail from the Custodian stating that the records responsive were ready for pick-up at the municipal building and the Complainant was advised that the cost of the documents was \$13.00. The Complainant asserts that upon receipt of the records responsive he was also given a cover letter from the Custodian stating that the additional records that were requested and not provided may not be readily available. The Complainant alleges that the Custodian made no attempt to identify the denied documents or give the Complainant any legal bases for their denial. The Complainant alleges that he was informed that his OPRA request would be reviewed and he would be contacted shortly.

The Complainant asserts that on August 31, 2006, he received a letter from the Custodian. The Complainant declares that this letter stated that the Custodian is still withholding the remaining records responsive and failed to give the Complainant a legal explanation why the records were not being released. The Complainant further alleges that the records responsive fall within the definition of N.J.S.A. 47:1A-1.1, whereby invoices and bills should be provided immediately upon request. The Complainant asserts the denied documents exist and that such existence is confirmed in invoices previously provided to the Complainant. The Complainant alleges that in records previously released to him reference is made to memos, e-mails, letters, etc., from CN Communications, some which have not been provided to the Complainant.

The Complainant declares that the Custodian is obligated to provide the Complainant with the records responsive in a timely fashion. The Complainant alleges that the Custodian failed to do this and also declares that the Custodian cannot initiate an indefinite review of the invoices and documents requested.

The Complainant asks that the Council declare that the Custodian has violated OPRA and that the Council order the Custodian to provide the Complainant with all

requested records, immediately, or if such records are denied, to identify such documents and provide the legal basis for denial.

### **September 11, 2006**

Letter from Custodian to Complainant. In this letter, the Custodian attaches a letter dated September 8, 2006 that the Custodian asserts was being typed and prepared for mailing when the Denial of Access Complaint was received. Additionally, the Custodian explains to the Complainant that there are no further records responsive to the OPRA request. The Custodian states that the remainder of the documents requested by the Complainant meet the criteria for inter-agency/intra-agency advisory, consultative, or deliberative material which is not subject to disclosure under OPRA. The Custodian further informs the Complainant that the information contained within the requested correspondence was considered and eventually placed into final form. In addition, the Custodian informs the Complainant that the Complainant can access the finalized documents by submitting another request on the Township's OPRA request form, which is attached, including the specific record that the Complainant is requesting.

### **September 13, 2006**

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

### **September 20, 2006**

Request for Statement of Information sent to the Custodian via e-mail.

### **September 29, 2006**

Custodian's Statement of Information ("SOI") submitted with the following attachments:

- Letter from Complainant to Custodian dated August 2, 2006,
- Letter from Custodian to Complainant dated August 7, 2006,
- Letter from Custodian to Complainant dated August 14, 2006,
- Letter from Custodian to Complainant dated August 31, 2006,
- Letter from Custodian to Complainant dated September 11, 2006,
- OPRA request dated September 12, 2006,<sup>3</sup> and
- Letter from Custodian to Complainant with attachments dated September 20, 2006,<sup>4</sup> and
- The CN Communications contract.

The Custodian certifies that she fulfilled the first section of the Complainant's OPRA request four (4) business days after the OPRA request was submitted. The Custodian alleges that she did not understand the second portion of the Complainant's OPRA request, wherein the Complainant refers to *any and all correspondence* between Readington Township *personnel at any level, elected or otherwise* and CN Communications, including but not limited to, contracts, letters, faxes, e-mails, or memos for 2005 and 2006. The Custodian asserts that she did not know what the Complainant meant when the Complainant referred to *personnel at any level*. The Custodian notes that the Complainant has a history of being very critical of her, her office and the Township Committee, so the Custodian thought it would be easier to try to fulfill the Complainant's OPRA request rather than deny it. The Custodian certifies that in an attempt to fulfill the

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<sup>3</sup> Document not relevant to this complainant.

<sup>4</sup> Content of letter is not relevant to this complaint.

Complainant's OPRA request, she sent inquiries to Township Committee members, CN Communications, and the Township's special counsel on August 7, 2006, the same day the Complainant's OPRA request was received. The Custodian certifies that she also sought advice from the Township Attorney as to whether the information requested by the Complainant was subject to disclosure under OPRA.

The Custodian alleges that she received replies to her inquiries between August 13, 2006, and August 30, 2006. The Custodian certifies that the Township Attorney stated that additional time would be required to review all of the records responsive. The Custodian certifies that she wrote a letter to the Complainant on August 31, 2006, stating that the balance of his request was still being reviewed and that the Custodian would contact the Complainant upon completion of the review.

The Custodian declares that on September 8, 2006, after receiving advice from the Township Attorney, a letter was prepared for the Complainant, informing him that the records responsive to his OPRA request were not required to be released under OPRA because they were pre-decisional drafts and advisory, consultative or deliberative material in nature. The Custodian alleges that she provided the Complainant with a list of the records responsive and the reasons for denial. The Custodian asserts that the letter further explains that the same documents became final, and are available for inspection. The Custodian asserts that after receiving the Denial of Access Complaint, she held off faxing the letter to the Complainant until the following Monday.

The Custodian asserts that all documents responsive to the first portion of the Complainant's OPRA request were provided in a timely manner. The Custodian further asserts that the second portion of the OPRA request was overly broad, not sufficiently identifiable, and was, in fact, a request for information. The Custodian cites MAG Entertainment, LLC v. Division of ABC, 375 N.J. Super. 534 (App. Div. 2005) as stating that OPRA permits only requests for records, not requests for information. The Custodian declares that MAG decided that a request must identify, with reasonable clarity, those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents. The Custodian further asserts that this requirement was reiterated in Bent v Township of Stafford, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian alleges that the request made by the Complainant falls within the description of the type of overbroad and unidentifiable request for information described in MAG and Bent.

The Custodian contends that the Complainant's request did not identify known documents or specific persons. The Custodian declares that although this request could have been immediately denied, she attempted to assist the Complainant in obtaining the records responsive to avoid argument and subsequent criticism by the Complainant at the Township Committee meetings or newspapers.

The Custodian further states that even if the Complainant's request clearly identified the records being requested, the documents sought by the Complainant contain inter-agency/intra-agency advisory, consultative and deliberative material and are not subject to disclosure under OPRA. The Custodian declares that under OPRA, the definition of a government record specifically excludes inter-agency/intra-agency advisory, consultative or deliberative material. The Custodian cites Rademacher v Borough of Eatontown, GRC Complaint 2004-18, (December, 2005), in which the GRC

ruled that opinions or advice from outside consultants hired by the Township were included within the inter-agency/intra-agency advisory, consultative or deliberative material exemption. The Custodian asserts that a review of the various faxes, e-mails, memos and letter files that the Clerk was able to retrieve between CN Communications and Committee members, as well as the Township's special legal counsel, revealed that the communications requested generally consisted of requests for direction, personal thoughts, opinions or advice, including proofreading remarks on draft documents, all of which were ultimately finalized and made available to the public in their final form. The Custodian contends that the Complainant is not being denied access to the finalized versions of the records responsive. The Custodian alleges that OPRA was not violated because draft documents are not subject to disclosure under OPRA.

Lastly, the Custodian declares that this complaint should be dismissed because the Custodian provided the Complainant with the relief the Complainant requested in his Denial of Access Complaint. The Custodian contends that she sent the Complainant a letter on September 11, 2006 which identifies the documents to which the Complainant was denied access and provides a legal basis for the denial. The Custodian asserts that she did act expeditiously in this matter.

#### **November 14, 2006**

Complainant's response to Custodian's SOI. First, the Complainant asserts that the Custodian violated OPRA by not providing a written denial to the records requested by the Complainant within the statutorily mandated seven (7) business days. The Complainant declares that it is because of this lack of a formal response, and the Custodian's violation of OPRA, that the Complainant filed a Denial of Access Complaint.

The Complainant disputes the Custodian's claim that the Complainant's OPRA request was overly broad. The Complainant declares that the OPRA request was unambiguous and clearly seeks a discrete category of records: those documents that the Township and its officers and employees exchanged with a specific vendor during a specific time period. The Complainant alleges that this request does not run afoul of the holdings in Bent and MAG.

The Complainant further declares that the records responsive cannot be considered advisory, consultative or deliberative material because in order for records to fall under that category the communications must be between eligible agencies, and in this case the communications are between the Township and an outside vendor. The Complainant asserts that CN Communications is not an agency and the Township's communications with it do not and cannot fall within the inter-agency/intra-agency exception.

The Complainant cites Gannett New Jersey Partners, LP v. County of Middlesex, 379 N.J. Super. 205 (2005) in which the Court found that "[t]he exemption from disclosure provided by N.J.S.A. 47:1A-1.1...is aimed at protecting the quality of government decisions by shielding the communications received by a decision maker from public disclosure." *Id* at 219. The Court also found that, in order to qualify for this privilege, "two conditions must be satisfied: (1) the document must be pre-decisional, meaning it was "generated before the adoption of an agency's policy of decision," and (2) it "must be deliberative in nature, containing opinions, recommendations, or advice about

agency policies.” *Id.* at 220. The Complainant also cites In re Liquidation of Integrity Insurance Co., 165 N.J. 75 (2000), in which it was found that the ACD privilege does not extend to “[p]urely factual material that does not reflect deliberative processes.” *Id.* at 85.

The Complainant asserts that the Township’s use of the public relations firm was – and can only permissibly have been – to tell the voters the facts. The Complainant alleges that because of this, the discussions with the firm must be considered factual material, not a deliberative process. The Complainant declares that when taxpayer monies pay for a public relations firm to receive and respond to communications, these communications cannot be considered private or withheld because they purportedly represent “personal thoughts and comments.”

The Complainant alleges that it is evident from the few materials that have been produced in response to the Complainant’s OPRA request that a number of the withheld records responsive relate to meetings or correspondence with third parties who are not on the Township Committee and have not, to the Complainant’s knowledge, been retained by it. The Complainant asserts that there is no basis under the “deliberative privilege” for withholding documents relating to meetings or communications with a member of the public. The Complainant declares that communications with the public are not wholly internal and have already been publicly disclosed to the members of the public participating in them.

The Complainant further cites N.J.S.A. 47:1A-5.g., which requires the Custodian to indicate the specific basis for any denial of access. The Complainant continues to declare that the Custodian is required to describe the redacted or suppressed information and explain its reasons in a manner that will enable other parties to assess the applicability of the privilege protection. The Complainant asserts that the Custodian continues to fail to provide the Complainant with any specific information to support the assertion that the documents being withheld fall under the advisory, consultative or deliberative material exemption. Additionally, the Complainant declares that even if that exemption were an acceptable basis for withholding the records responsive, the blanket denial of access to these documents is improper, as many of the documents in question would also contain factual material. The Complainant references County of Middlesex, supra, 379 N.J. Super. 219-20, in which the court ruled that if a document contains both factually and deliberative material, the deliberative material should be redacted and the factual material disclosed. The Complainant requests an *in camera* review of the documents in order to determine if there are any factual portions to any of the documents being withheld.

The Complainant asserts that the Custodian has provided the Complainant with nothing more than a blanket assertion that every sentence contained within 175 pages of e-mails are non-factual, and subject to the ACD exemption. Finally, the Complainant is seeking attorney’s fees in the event that the Complainant prevails in this proceeding.

## **November 29, 2006**

Custodian’s response to Complainant’s November 14, 2006 submission. The Custodian alleges that N.J.S.A. 47:1A-5.g. allows a Custodian to label a document as temporarily unavailable because it is in use or in storage. The Custodian reiterates that the Complainant was notified within seven (7) business days that the records responsive were not readily available. The Custodian asserts that since the records responsive were

not in her possession she could not grant or deny the Complainant access at the time of the request. The Custodian further alleges that the Complainant's OPRA request should be considered invalid because the request was not printed on the Township's official request form<sup>5</sup>. The Custodian declares that the letter the Complainant attached to the OPRA request failed to give a specific description of the identifiable records sought, as mandated by GRC Advisory Opinion 2006-07. The Custodian also alleges that because the Complainant's OPRA request was overly broad and unspecific, the Custodian was unable to fulfill it promptly or properly. Again, citing Bent, the Custodian asserts that the Complainant's requests for "any and all" and "but not limited to" does not constitute limitation or specificity of records within the meaning of OPRA. The Custodian alleges that the Complainant is very familiar with the personnel in the Custodian's office, as well as the names of the Township Committee members, and other key officials, and had the Complainant given the Custodian specific names in the OPRA request, the request could have been processed sooner.

The Custodian reiterates in this letter that these records fall within the advisory, consultative or deliberative material exemption of OPRA. The Custodian again references Rademacher, where the Council found that a report of an outside professional management firm to be within the inter-agency/intra-agency advisory, consultative, or deliberative material exemption. The Custodian further asserts that in Department of the Interior and Bureau of Indian Affairs v. Klamath Water Users Protective Association, 532 U.S. 1, 12; 121 S.Ct 1060, 1068; 149 L. Ed2d 87, (2001), the Justices acknowledged that consultants without an interest that might be affected by the government action under consideration "may be enough like the agency's own personnel to justify calling their communications 'intra-agency.'" *Id.* at 3. The Custodian alleges that in the complaint now before the GRC, CN Communications, Inc. was hired as an outside consultant to advise the Township. The Custodian asserts that CN Communications, Inc. is independent of the Township and does not have an interest that might be affected by the government action that is under consideration.

The Custodian further declares that CN Communications was used to assemble and discern factual information in order to produce various documents that were eventually distributed to the public. The Custodian asserts that obtaining a set of facts that everyone agreed was accurate required consultation, deliberation, and advice among Township Committee members, attorneys, and CN Communications. The Custodian cites Edwards v. City of Jersey City, GRC Complaint No. 2002-71 (February 2003) wherein the Council found that the exemption in OPRA for "advisory, consultative, or deliberative material" ("ACD exemption") reflects the deliberative process privilege already recognized in the federal Freedom of Information Act ("FOIA"), and in federal and State case law. See NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975); In re Liquidation of Integrity Insurance Co., 165 N.J. 75 (2000). The Council determined that the plain language of OPRA, and its similarity to the language used by Congress and the federal courts, strongly suggest that in excluding from the definition of government records "inter-agency and intra-agency advisory, consultative, or deliberative material," the New Jersey Legislature intended to codify the deliberative process privilege.

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<sup>5</sup> The Complainant submitted his request via a letter attached to the Township's official OPRA request form.

In addition, the Custodian asserts that the written denial of access was in accordance with the provisions of OPRA. The Custodian agrees to release the records to which the Complainant has been denied access to the GRC for an *in camera* inspection.

Lastly, the Custodian asserts that the Complainant should not be awarded attorney's fees, and the Custodian's denial of access to the records responsive was in accordance with OPRA.

### **Analysis**

#### **Whether the Complainant unlawfully denied access to the requested record(s)?**

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 ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA also states that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request* ... In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request* ...” (Emphasis added.) N.J.S.A. 47:1A-5.i.

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 that he believes the actions of the Custodian violate OPRA. The Complainant states that on August 2, 2006 he forwarded a letter requesting copies of public documents to the attention of the Custodian clearly stating the exact nature of the request, as well as an authorization to bill the Complainant up to \$50.00 for copying costs associated to this OPRA request. The Complainant further asserts that on August 14, 2006 he received a voice mail from the Custodian stating that the records



responsive were ready for pick-up at the municipal building and he was advised that the cost of the documents was \$13.00. Upon receiving the records, the Complainant was also given a cover letter from the Custodian stating that the additional records that were requested and not provided may not be readily available. The Complainant alleges that the Custodian made no attempt to identify the denied documents or give the Complainant any legal bases for their denial. Instead the Complainant states that he was informed that his OPRA request would be reviewed and he would be contacted shortly.

The Complainant asserts that on August 31, 2006 he received a letter from the Custodian. The Complainant declares that this letter reiterates the previous letter from the Custodian that the Custodian is still withholding the remaining records responsive and has not given the Complainant a legal explanation why. The Complainant asserts that the Custodian was obligated to provide the Complainant with the records responsive in a timely fashion as provided by OPRA. The Complainant believes that the Custodian failed to do this and also declares that the Custodian is not at liberty to initiate an indefinite review of the invoices and documents requested and has therefore violated N.J.S.A. 47:1A et seq.

The Custodian alleges that she did not understand the second portion of the Complainant's OPRA request wherein the Complainant refers to *any and all correspondence* between Readington Township *personnel at any level, elected or otherwise* and CN Communications including but not limited to, contracts, letters, faxes, e-mails, or memos for 2005 and 2006. The Custodian asserts that she did not know what the Complainant meant when the Complainant referred to *personnel at any level*. The Custodian noted that the Complainant has a history of being very critical of her, her office and the Township Committee, so the Custodian thought it would be easier to just try to fulfill the Complainant's OPRA request. In an attempt to fulfill the Complainant's OPRA request the Custodian sent inquiries to Township Committee members, CN Communications and the Township's special Counsel on August 7, 2006, the same day the Complainant's OPRA request was received. The Custodian states she also sought advice from the Township Attorney as to whether the information requested by the Complainant was subject to disclosure under OPRA.

The Township Attorney met with the Custodian on August 30, 2006 and expressed the opinion that additional time would be required to review all of the records responsive. The Custodian asserts that she wrote a letter to the Complainant on August 31, 2006, stating that the balance of his request was still being reviewed and that the Custodian would contact the Complainant upon completion of the review.

The Custodian asserts that all documents responsive to the first portion of the Complainant's OPRA request were provided in a timely manner. The Custodian further asserts that the second portion of the OPRA request was overly broad, not sufficiently identifiable, and was, in fact, a request for information. The Custodian cites MAG as holding that OPRA allows for requests of records, not requests for information. The Custodian declares that MAG requires that a request must identify with reasonable clarity those documents that are desired and a party cannot satisfy this requirement by simply requesting all of an agency's documents. The Custodian further asserts that the requirement was again reiterated in Bent v Township of Stafford, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian alleges that the request made by the Complainant falls within the description of the type of overbroad and unidentifiable request for information

described in MAG and Bent. The Complainant's request did not identify known documents or specific persons and required the Custodian to guess who the *personnel* are that the Complainant mentions. The Custodian declares that although this request could have been immediately denied, she attempted to assist the Complainant in obtaining the records responsive to avoid argument and subsequent criticism by the Complainant at the Township Committee meetings or newspapers, as the Complainant has done in the past.

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.

The Custodian is mandated under OPRA to grant or deny access in seven (7) business days. In this case, the Custodian contended that the records were under review. After a 24 business day review, the Custodian informed the Complainant that access to the remainder of the records responsive was denied. The length of review is excessive and violates OPRA, which states "a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request* ..." (emphasis added). The Custodian asserted that the records responsive took additional time to gather, over and above the statutorily mandated seven (7) business days, however the Custodian failed to communicate this to the Complainant. The Custodian never contacted the Complainant regarding the estimated date that the records responsive would be available.

If the Custodian required additional time beyond the seven (7) business day time period required by OPRA in order to satisfy the Complainant's OPRA request, the Custodian should have obtained a written agreement from the Complainant in order to do so. In Paff v. Bergen County Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006), the Custodian knew he needed additional time in order to respond to the Complainant's request, but failed to obtain a written agreement from the Complainant extending the seven (7) business day time frame required under OPRA to respond. The Council held that the Custodian's failure to obtain a written agreement extending the seven (7) business day time period resulted in a "deemed" denial of the request. In the complaint now before the GRC, the Custodian contacted the Complainant within the statutorily mandated seven (7) business days. However the Custodian did not provide the Complainant with a lawful reason for denial of access within the statutorily mandated seven (7) business days or even ask for an extension. Instead, the Custodian only told the Complainant that the records responsive were under review.

Because the Custodian never obtained a written agreement with the Complainant extending the time in which the Custodian had to fulfill the Complainant's OPRA request, the Custodian violated OPRA.

The Custodian further asserts that the delay in fulfilling this OPRA request was a result of the Complainant's request being overly broad. The New Jersey Superior Court has held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination."* N.J.S.A. 47:1A-1." (Emphasis

added.) MAG, Supra, 375 N.J. Super. at 546. The Court further held that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) *Id.* at 549.

Further, in Bent<sup>6</sup>, the Superior Court referenced MAG when it held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."<sup>7</sup> In Bent, the Court found that the general request for information neither identified nor described with any specificity the records sought. Therefore, there was no unlawful denial of access. Additionally, in GRC complaint Phillip Boggia v. Borough of Oakland, 2005-36 (October 2005), the Council found that OPRA was not intended to require a custodian to do research in providing access to government records.

Thus, it may be concluded that when a complainant's request is overbroad and unclear, the burden is on the complainant to clarify the request because "agencies are required to disclose only 'identifiable' government records." MAG. The Custodian was unsure of the meaning of the Complainant's OPRA request and should, therefore, have requested clarification within the statutorily mandated seven (7) business days.

In Cody v. Middletown Township Public Schools, GRC Complaint No. 2005-98 (December 2005), the Council found that, "...in the case of the records that needed clarification, there is no denial of access to records because the Custodian did properly respond to those requests in writing within the statutorily required seven (7) business days, indicating to the Complainant that clarification was necessary but did not receive a response."

In the complaint now before the Council the Custodian contends that the Complainant's request was overly broad. In Tucker Kelley v. Rockaway Township, GRC Complaint No. 2006-176 (March 2007) the Council found that regardless of the vagueness of an OPRA request, the Custodian is statutorily mandated to seek clarification for any requests deemed broad or unclear within seven (7) business days. However, the Custodian in this complainant failed to contact the Complainant for clarification, instead the Custodian undertook a response to the Complainant's OPRA request without requesting clarification.

Therefore, the Custodian violated N.J.S.A. 47:1A-5.i. by failing to grant or deny the Complainant access to the records responsive within the statutorily mandated seven (7) business days. The Custodian also failed to obtain a written agreement from the Complainant extending the time in which the Custodian had to fulfill the Complainant's OPRA request. Paff v. Bergen County Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006).

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<sup>6</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>7</sup> As stated in Bent, supra, 381 N.J. Super at 37.

**Whether the Custodian's denial to the access of the records responsive because of the statutory exemptions for "advisory, consultative, or deliberative material" pursuant to N.J.S.A. 47:1A-1.1 was unlawful under OPRA?**

OPRA provides that "...[t]he terms [government record or record] shall not include inter-agency or intra-agency *advisory, consultative, or deliberative material...*" (Emphasis added.) N.J.S.A. 47:1A-1.1.

The Custodian asserts that the documents sought by the Complainant are inter-agency/intra-agency advisory, consultative or deliberative material and not subject to disclosure under OPRA. The Custodian declares that under OPRA the definition of a government records specifically excludes inter-agency/intra-agency advisory, consultative or deliberative material. The Custodian cites Rademacher v Borough of Eatontown, GRC Complaint 2004-18, in which the GRC ruled that opinions or advice from outside consultants hired by the Township were included within the inter-agency/intra-agency advisory, consultative or deliberative material exemption. The Custodian asserts that a review of the various faxes, e-mails, memos and letter files that the Clerk was able to retrieve between CN Communications and Committee members, as well as the Township's special legal counsel, revealed that the communications requested generally consisted of requests for direction, personal thoughts, opinions or advice, including proofreading remarks on draft documents which all were ultimately finalized and made available to the public in their final form. The Custodian contends that the Township does not deny the Complainant access to the finalized versions of the records responsive and the Custodian maintains that OPRA was not violated because draft documents are not subject to disclosure under OPRA.

The Custodian also declares that the Complainant's complaint should be dismissed because the Custodian provided the Complainant with the relief the Complainant requested in his Denial of Access Complaint. The Custodian contends that she sent the Complainant a letter on September 11, 2006 which identifies the documents denied and provides a legal basis for the denial of said documents. The Complainant asserts that the Custodian has provided the Complainant with nothing more than a blanket assertion that every sentence contained within 175 pages of e-mails is non-factual and subject to the ACD exemption.

The Complainant asserts that the records responsive cannot be considered advisory, consultative or deliberative material because in order for records to fall under that category the communications must be between eligible agencies, and in this case the communications are between the Township and an outside vendor. The Complainant asserts that CN Communications is not an agency and the Township's communications with it do not and cannot fall within the inter-agency/intra-agency exception.

The Complainant asserts that the Township's use of the public relations firm was – and can only permissibly have been – to tell the voters the facts, as taxpayers funds cannot be used to pay a public relations firm to shape legal strategy or to help the Township make official decisions. Because of this, the discussions with the firm must be considered factual material that does not reflect deliberative processes.

The Complainant further cites N.J.S.A. 47:1A-5.g., which requires the Custodian to indicate the specific basis for any denial of access. The Complainant declares that the Donald Baldwin v. Readington Township, 2006-165 – Findings and Recommendations of the Executive Director

Custodian is required to describe the redacted or suppressed information and explain its reasons in a manner that will enable other parties to assess the applicability of the privilege protection. Additionally, the Complainant declares that even if that exemption were an acceptable basis for withholding the records responsive, the blanket denial of access to these documents is improper, as many of the documents in question would certainly also contain factual material. The Complainant references Gannett New Jersey Partners, LP v. County of Middlesex, 379 N.J. Super. 205 (2005) in which the court ruled that if a document contains both factual and deliberative material, the deliberative material should be redacted and the factual material disclosed. The Complainant requests an *in camera* review of the documents in order to determine if there are any factual portions to any of the documents being withheld.

It cannot be determined whether the Custodian has met the burden of proving that the requested documents are exempt from disclosure without actually reviewing the documents to confirm the Custodian's legal conclusion. Therefore, it is recommended that the Council conduct an *in camera* inspection of all 175 e-mails to determine whether the documents are exempt from disclosure in whole or in part because of "advisory, consultative or deliberative material" pursuant to N.J.S.A. 74:1a-1.1.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

- 1) The Custodian violated N.J.S.A. 47:1A-5.i. by not granting or denying the Complainant access to the records responsive within the statutorily mandated seven (7) business days. The Custodian also failed to obtain a written agreement from the Complainant extending the time in which the Custodian had to fulfill the Complainant's OPRA request. Paff v. Bergen County Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006).
- 2) Regardless of the vagueness of an OPRA request, the Custodian is statutorily mandated to seek clarification for any requests deemed broad or unclear within seven (7) business days. Tucker Kelley v. Rockaway Township, GRC Complaint No. 2006-176 (March 2007).
- 3) It cannot be determined whether the Custodian has met the burden of proving that the requested documents are exempt from disclosure without actually reviewing the documents to confirm the Custodian's legal conclusion. Therefore, it is recommended that the Council conduct an *in camera* inspection of all 175 e-mails to determine whether the documents are exempt from disclosure in whole or in part because of "advisory, consultative or deliberative material" pursuant to N.J.S.A. 47:1a-1.1.
- 4) **The Custodian must deliver<sup>8</sup> to the Council in a sealed envelope six copies of the requested unredacted documents (see #3 above), a documents or redactions index detailing the lawful basis for denial of each document and/or each redaction asserted and the Custodian's legal certification, in accordance with N.J. Court Rule 1:4-4, that the documents provided are the documents requested by the Council for the *in camera* inspection within five (5) business days from receipt of the Council's Interim Order.**

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<sup>8</sup> The *in camera* documents 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 by the deadline.

- 5) The matter of prevailing parties attorney's fees will be determined after the Council conducts the *in camera* inspection.

Prepared By:

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Approved By:

Catherine Starghill, Esq.  
Executive Director

April 18, 2007