



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 30, 2018 Government Records Council Meeting

Steven Hyman
Complainant

Complaint No. 2007-118

v.

City of Jersey City (Hudson)
Custodian of Record

At the January 30, 2018 public meeting, the Government Records Council (“Council”) considered the January 23, 2018 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Council should accept the ALJ’s Initial Decision with a modification. Specifically, the Council should accept the ALJ’s conclusions and order the Custodian to “produce documents Item Nos.: 42, 69/935/1215, 83/ 934, 1145, 1225, 1255, 1258, 1259, . . . 3199, 3039, 3219, 3220, 3221.” However, the Council should modify the Initial Decision to remove “2310, 2626, 2974” because the Administrative Law Judge found that the Custodian lawfully denied access to these three (3) records. Further, the Council should accept the ALJ’s decision concluding that the Custodian did not knowingly and willfully violate OPRA. The Council should also accept the ALJ’s decision ordering that the Complainant “is entitled to an award of attorney’s fees in the amount of \$34,242.00.” Finally, because the ALJ dispensed all outstanding issues, no further adjudication is required.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.



Final Decision Rendered by the
Government Records Council
On The 30th Day of January, 2018

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: February 2, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Council Staff
January 30, 2018 Council Meeting**

**Steven Hyman¹
Complainant**

GRC Complaint No. 2007-118

v.

**City of Jersey City (Hudson)²
Custodial Agency**

Records Relevant to Complaint:

1. All records identified in attached privilege log and privilege log No. 2.³
2. The McGuire Associates appraisal report for Block 247, Lot 50A.
3. The McGuire Associates appraisal report for Block 212, Lot M.
4. Council resolution(s) authorizing John Curley's legal services in the amount of \$56,901.78.
5. All resolutions, contracts and invoices for legal services performed by John Curley from June, 2006 to the date of the request.⁴
6. Invoices for Charles Montange's legal services based on two resolutions authorizing a total of \$40,000 in payments for services rendered by Mr. Montange.
7. Council resolution authorizing McGuire Associates real estate appraisal services not to exceed \$25,000.
8. Council resolution authorizing Value Research Group real estate appraisal services.
9. Council resolution authorizing Verne V. Watley professional services.
10. Council resolution authorizing Burns & Fiorina, Inc., demolition services.
11. All resolutions, contracts and invoices pertaining to the railroad title search.⁵
12. All resolutions, contracts and invoices pertaining to the services performed by [Dresdner] Robin Environmental Management, Inc.
13. All resolutions, contracts and invoices pertaining to the services performed by MATRIX Environmental & Geological Services, Inc.
14. All resolutions, contracts and invoices pertaining to the services performed by EnviroTech Research, Inc.
15. All resolutions, contracts and invoices pertaining to the services performed by GEOD Corporation.

¹ Represented by Michele R. Donato, Esq. (Lavallette, NJ).

² Represented by Raymond Reddington, Esq. (Jersey City, NJ).

³ The two (2) privilege logs are documents created by Custodian's Counsel in response to the underlying OPRA request and were provided to Complainant along with some of the records responsive. These logs provide a list of exempt records and the legal reason for the record's nondisclosure pursuant to OPRA.

⁴ The Complainant notes that he was provided with records responsive to this request item for May, 2006 which are not at issue in this complaint.

⁵ The Complainant states that he was provided with various proposals for title search services but that no records were included as to which vendors were selected or what price they may have charged.

16. All additional resolutions, contracts, invoices, proposals and other financial records pertaining to the Sixth Street Embankment that Jersey City has yet to provide.⁶

Request Made: October 25, 2006⁷

Response Made: October 26, 2006

Custodian: Robert Byrne

GRC Complaint Filed: May 15, 2007⁸

Background

December 18, 2012 Council Meeting:

At its December 18, 2012 public meeting, the Council considered the November 20, 2012 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

1. The Custodian failed to fully comply with the Council's September 25, 2012 Interim Order because he failed to submit certified confirmation of compliance to the Executive Director within the extended time frame to comply.
2. The Complainant's Counsel has failed to establish in her request for reconsideration of the Council's September 25, 2012 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 has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in referring this complaint to the Office of Administrative Law for an *in camera* review *de novo*. Notably, Counsel failed substantiate that the Court's remand specifically required the GRC to order additional information from the Custodian. Thus, Counsel's request for reconsideration should be denied. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990); Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996); 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). This complaint should be referred to the OAL for in accordance with the conclusion Nos. 3 and 4 of the Council's September 25, 2012 Interim Order.

Procedural History:

On December 19, 2012, the Council distributed its Interim Order to all parties. On May 1,

⁶ The Complainant contends that based on the number of records not provided, other records relating to the request must exist.

⁷ A majority of the records requested in the OPRA request were provided to the Complainant by the Custodian. The records relevant to this complaint are cited specifically by the Complainant as those records to which access has been denied by the Custodian.

⁸ The GRC received the Denial of Access Complaint on said date.

2013, the Government Records Council (“GRC”) transmitted this complaint to the Office of Administrative Law (“OAL”). On December 21, 2017, the Honorable Joann LaSala Candido, Administrative Law Judge (“ALJ”), issued an Initial Decision in this matter. The ALJ’s December 21, 2017 Initial Decision, set forth as “Exhibit A,” determined that:

I **CONCLUDE** that the following [i]tems do not fall under the attorney-client privilege or the ACD exemption, Item Nos.: 42, 69/935/1215, 83/934, 1145, 1225, 1255, 1258, 1259, 3039, 3199, 3219, 3220, and 3221.

I **CONCLUDE** that the [Complainant’s] application for attorney’s fees was reasonable.

I **CONCLUDE** that by the totality of the circumstances [the Custodian] did not knowingly and willfully violate OPRA.

Id. at 53-54

The ALJ therefore ordered the following:

Based on the briefs, exhibits and certifications submitted, I hereby **ORDER** as follows

1. [The Custodian] shall produce documents Item Nos.: 42, 69/935/1215, 83/934, 1145, 1225, 1255, 1258, 1259, 2310, 2626, 2974, 3199, 3039, 3219, 3220, 3221.
2. [The Complainant] is entitled to an award of attorney’s fees in the amount of \$34,242.00.

Id. at 54.

The ALJ’s Initial Decision provided the parties thirteen (13) days from mailing to submit to the GRC exceptions to the decision. The GRC did not receive any exceptions from the parties.

Analysis

Administrative Law Judge’s Initial Decision

The ALJ’s findings of fact are entitled to deference from the GRC because they are based upon the ALJ’s determination of the credibility of the parties. “The reason for the rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility.” In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div. 1989) (*certif. denied* 121 N.J. 615 (1990)). The Appellate Division affirmed this principle, underscoring that, “under existing law, the [reviewing agency] must recognize and give due weight to the ALJ’s unique position and ability to make demeanor-based judgments.” Whasun Lee v. Bd. of Educ. of the Twp. of Holmdel, Docket No. A-5978-98T2 (App. Div. 2000), slip op. at 14. “When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ’s credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the

record as a whole.” Cavalieri v. Bd. of Tr. of Pub. Emp. Ret. Sys., 368 N.J. Super. 527, 537 (App. Div. 2004).

The ultimate determination of the agency and the ALJ’s recommendations must be accompanied by basic findings of fact sufficient to support them. State, Dep’t of Health v. Tegnazian, 194 N.J. Super. 435, 442-43 (App. Div. 1984). The purpose of such findings “is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefor.” Id. at 443. Additionally, the sufficiency of evidence “must take into account whatever in the record fairly detracts from its weight”; the test is not for the courts to read only one side of the case and, if they find any evidence there, the action is to be sustained and the record to the contrary is to be ignored (citation omitted). St. Vincent’s Hosp. v. Finley, 154 N.J. Super. 24, 31 (App. Div. 1977).

Here, the ALJ fairly and exceptionally summarized the evidence submitted by parties in their motions, explaining how she weighed the proofs before her. Further, the ALJ provided a comprehensive explanation of her *in camera* review and how she reached her conclusion on the records reviewed. The ALJ also provided a clear analysis as to why she determined that the Custodian did not knowingly and willfully violate OPRA. Moreover, the ALJ provided a detailed explanation on how she arrived at the appropriate amount of prevailing party attorney’s fees to reward to the Complainant. The ALJ’s conclusions are clearly aligned and consistent with the evidence of record. As such, the GRC is satisfied that it can ascertain from the record what the ALJ accepted as fact and finds that those facts provide a reasonable basis for her conclusions.

The GRC does note that a minor modification needs to be made to the Order. Specifically, the ALJ identified three (3) document numbers in the Order that she did not identify as disclosable in her conclusion. Those document numbers are “2310, 2626, [and] 2974.” A deeper review of the Initial Decision reveals that the ALJ determined these three (3) documents were properly withheld. Id. at 42-43. The Order should be amended to reflect the forgoing, so as to remain in line with the ALJ’s findings.

Therefore, the Council should accept the ALJ’s Initial Decision with a modification. Specifically, the Council should accept the ALJ’s conclusions and order the Custodian to “produce documents Item Nos.: 42, 69/935/1215, 83/ 934, 1145, 1225, 1255, 1258, 1259, . . . 3199, 3039, 3219, 3220, 3221.” However, the Council should modify the Initial Decision to remove “2310, 2626, 2974” because the ALJ found that the Custodian lawfully denied access to these three (3) records. Further, the Council should accept the ALJ’s decision concluding that the Custodian did not knowingly and willfully violate OPRA. The Council should also accept the ALJ’s decision ordering that the Complainant “is entitled to an award of attorney’s fees in the amount of \$34,242.00.” Finally, because the ALJ dispensed all outstanding issues, no further adjudication is required.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council should accept the ALJ’s Initial Decision with a modification. Specifically, the Council should accept the ALJ’s conclusions and order the Custodian to “produce documents Item Nos.: 42, 69/935/1215, 83/ 934, 1145, 1225, 1255, 1258, 1259, . . . 3199, 3039, 3219, 3220, 3221.” However, the Council should modify the

Initial Decision to remove “2310, 2626, 2974” because the Administrative Law Judge found that the Custodian lawfully denied access to these three (3) records. Further, the Council should accept the ALJ’s decision concluding that the Custodian did not knowingly and willfully violate OPRA. The Council should also accept the ALJ’s decision ordering that the Complainant “is entitled to an award of attorney’s fees in the amount of \$34,242.00.” Finally, because the ALJ dispensed all outstanding issues, no further adjudication is required.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

January 23, 2018



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. GRC 06477-13

AGENCY DKT. NO. 2007-118

STEVE HYMAN

Petitioner

v.

CITY OF JERSEY CITY,

Respondent.

Michelle R. Donato, Esq., for petitioner

Raymond Reddington, Assistant Corporation Counsel, for Respondent (Jeremy Farrell, Corporation Counsel, attorney)

Record Closed: December 7, 2017

Decided: December 21, 2017

BEFORE **JOANN LASALA CANDIDO,** ALAJ:

STATEMENT OF THE CASE

Petitioner, Steve Hyman (Hyman or petitioner), is principle of eight limited liability companies, each of which individually own one of eight properties located in Jersey City. Hyman has been embroiled in litigation for several years with the City of Jersey City (Jersey City or respondent) over his efforts to develop these properties. In January 2006,

pursuant to N.J.S.A. 47:1A-5, Hyman filed a records request with Jersey City seeking documents related to the eight properties. Jersey City released thousands of pages of records, but withheld 297 pages claiming the request was overbroad and citing attorney-client privilege (ACP) or Open Public Records Act's (OPRA) "advisory, consultative, or deliberative" (ACD) exemption.

PROCEDURAL HISTORY

The Government Records Council (GRC) transmitted the matter to the Office of Administrative Law (OAL) for determination as a contested case pursuant to N.J.S.A. 52:14F-1 to -13. The GRC directed: (1) that the OAL shall conduct an in-camera review to determine "if necessary" whether the Custodian (Jersey City) knowingly and willfully violated OPRA; and (2) that OAL determine the reasonable prevailing party attorney's fees. GRC Complaint No. 2007-118, supra, Interim Order. Extensive proceedings were thereafter conducted before previously assigned Administrative Law Judges (ALJs). A combination of motion practice and reassignment stalled issuance of an Initial Decision by the OAL. On July 17, 2015, Respondent submitted Privilege Documents Volume I (Vol. I), Privilege Documents Volume II (Vol. II), along with City of Jersey City Public Records Act Third Document Index (Index), which sets forth descriptions of the contested items and the basis for Jersey City's privilege or exemption claims regarding each. These matters were transmitted by the GRC to the OAL to conduct an in-camera review and determine reasonable prevailing-attorney's fees under the (OPRA). N.J.S.A. 47:1A-1 to -13.

On May 15, 2007, Hyman filed a Denial of Access Complaint with the GRC. Hyman v. City of Jersey City, GRC Complaint No. 2007-118, Interim Order (Sept. 25, 2012) <http://www.nj.gov/grc/decisions/pdf/2007-118.pdf>. On August 24, 2010, the GRC conducted an in-camera review and issued its Final Decision finding that a majority of the requests made by Hyman were overly broad and invalid under OPRA. Ibid. On June 23, 2011, Hyman appealed the GRC's Final Decision. The Appellate Division reversed the GRC denial of access and remanded the case for further proceedings related to Jersey

City's assertion of attorney client privilege and the ACD exemption. Hyman v. City of Jersey City, No. A-0789-10T4, 2012 N.J. Super. Unpub. LEXIS 2032, at *3 (App. Div. Aug. 27, 2012)

A telephone conference addressing the status of the case concerning the submitted documents was held before the undersigned on September 14, 2017 and December 7, 2017.

FINDINGS OF FACT

Based on the record, including the parties' briefs and submission, I **FIND** that the following are relevant facts in this matter:

1. Petitioner, Steve Hyman, is principle of eight Limited Liability Companies (LLC or Companies). Each LCC individually owns one of eight properties located in Jersey City (collectively "Embankment" or "Properties"). Hyman has been embroiled in litigation for several years with Respondent, Jersey City, over his efforts to develop these properties.
2. The Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition (Coalition), a "citizens group," was formed in approximately 1998 to block Hyman's development efforts. The Coalition is comprised of private citizens and respondent's officials and employees. Maureen Crowley (Crowley), a private citizen and a resident of Jersey City, is the Coalition's Coordinator. She is not an employee of Jersey City. Crowley coordinated meetings of the Coalition.
3. Crowley also coordinates the "Embankment Acquisition Steering Committee" (Steering Committee). The Town Council did not establish the Steering Committee. The Coalition is a member of the Committee. The Steering Committee is composed of "private citizens," as well as Jersey City "officials" and employees. It met at various times, commencing on February 14, 2005, and ending on or before September 28, 2005. The Steering Committee considered the possible acquisition of the Embankment properties for the construction of a public park. The

Steering Committee is not party to any lawsuit with Hyman. (Letter Brief for petitioner at 2, Hyman v. Jersey City, No. GRC 6477-13, (July 11, 2013)).

4. In 2005, one of Hyman's LLCs, 212 Marin Boulevard, LLC, filed two lawsuits in Hudson County Superior Court, Docket Nos. HUD-L-04683-05 and HUD-L-4908-05 (Hudson County Superior Court cases). The lawsuits name as defendants Jersey City, The Planning Board of Jersey City, the Jersey City Historical Preservation Commission, and Jersey City Corporate Counsel, Joanne Monahan.
5. In January 2006, The Coalition lobbied Jersey City to stop any development of the Embankment and to preserve it as a landmark. Jersey City and the Coalition filed a joint petition with the Federal Surface Transportation Board (STB), against Hyman, seeking declarations that the Embankment was previously "a line of rail" and that Conrail had therefore illegally sold the Properties to petitioner without first obtaining abandonment authorization of the STB.
6. The Coalition and respondent's stated position is that the Embankment properties should be purchased by respondent for the creation of a public park. Hyman and the Companies' stated position evidenced an intent to build housing thereon.
7. Jersey City retained Charles Montange (Montange), an attorney, to represent it before the STB. Montange already represented the Coalition in that matter. After several proceedings before the STB and federal courts, it was ultimately determined that the Embankment properties are subject to the STB's abandonment jurisdiction.
8. Respondent and the Coalition were subsequently co-litigants regarding the Properties in proceedings before the District of Columbia Court of Appeals. City of Jersey City v. Conrail, 741 F. Supp. 2d 131 (2010).
9. While the matter before the STB was pending, on October 25, 2006, Hyman submitted a request to Jersey City's custodian of records, Robert Byrne (Custodian or Byrne), seeking records related to the Properties. Hyman v. City of Jersey City, Supplemental Findings and Recommendations, GRC Complaint No. 2007-118 2 (September 18, 2012). Byrne certifies that he denied access to records on the advice of counsel that the records were not subject to disclosure based on attorney-client privilege and/or the advisory, deliberative, or consultative

exemption of OPRA. Hyman v. City of Jersey City, GRC Complaint No. 2007-118, In Camera Findings and Recommendations of the Executive Director 2 (May 27, 2010).

10. In response, Jersey City corporate counsel created two privilege logs, which were provided to Hyman that contained a list of exempt records. Hyman v. City of Jersey City, GRC Complaint No. 2007-118, Finding and Recommendation of the Executive Director 12 (Mar. 25, 2009). Jersey City agreed to release thousands of pages of records, but withheld 297 pages, claiming that the request was overbroad. Moreover, Jersey City claimed the ACP and the ACD exemption to the disclosure of government records. Ibid. Jersey City provided petitioner with a document index (First Document Index), describing the documents not provided.
11. On May 15, 2007, Hyman filed a Denial of Access Complaint (Complaint) with the GRC, submitting sixteen categories (Categories) of records to which he had been denied access. The Categories were as follows:
 - i. All records identified in a referenced "Privilege Log No. 2";
 - ii. A McGuire Associates appraisal report (McGuire Appraisal Report) for Block 247, Lot 50A;
 - iii. A McGuire Appraisal Report for Block 212, Lot M;
 - iv. Jersey City Council Resolutions (Council Resolutions) authorizing legal services of John Curley (Curley), in the amount of \$56, 901.78;
 - v. All Council Resolutions, contracts, and invoices for legal services of Curley, from June 2006 to the date of the request;
 - vi. Invoices for legal services by Montange, pertinent to two Council Resolutions authorizing payments totaling \$40,000;
 - vii. Council Resolutions authorizing McGuire real estate appraisal services, not to exceed \$25,000;
 - viii. A Council Resolution authorizing real estate appraisal services by Value Research Group;
 - ix. A Council Resolution authorizing Verne V. Watley professional services;
 - x. A council resolution authorizing Burns & Fiorina, Inc. demolitions services;
 - xi. All resolutions, contracts, and invoices pertinent to the railroad title search;

- xii. All resolutions, contracts, and invoices pertaining to services performed by Dresden Robin Environmental & Geological Services, Inc.;
 - xiii. All resolutions, contracts, and invoices pertaining to services performed by MATRIX Environmental & Geological Services, Inc.;
 - xiv. All resolutions, contracts, and invoices pertaining to services performed by Enviro Tech Research, Inc.;
 - xv. All resolutions, contracts, and invoices pertaining to services performed by Geod Corporation;
 - xvi. All additional Council Resolutions, contracts, invoices, proposals, and “other financial records” pertaining to the “Conrail Embankment” not previously provided by Jersey City. (In Camera Findings and Recommendations of the Executive Director at 1.)
12. On August 24, 2010, the GRC determined, among other things, that most of the categories Hyman requested were overly broad. Hyman v. City of Jersey City, GRC Complaint No. 2007-118, Final Decision, (Aug. 24, 2010).
13. On August 27, 2012, The Superior Court of New Jersey, Appellate Division, affirmed in part, but reversed as to the GRC findings that categories 2-15 were overbroad and remanded the matter for further proceedings regarding the assertion of ACD and ACP. Hyman, No. A-0789-10T4, supra, at *22.
14. On September 25, 2012, the GRC referred the matter to the OAL “for an *in camera review de novo* and a determination of whether the Custodian unlawfully denied access to the records contained within the relevant privilege log” and to determine, “if necessary,” whether the Custodian “knowingly and willfully violated OPRA.” Hyman v. City of Jersey City, GRC Complaint No. 2007-118, Interim Order 1 (Dec. 18, 2012).
15. The GRC determined that petitioner was a “prevailing party” entitled to “reasonable” attorney fees and that the OAL should determine such fees, but that “an enhancement of the lodestar fee is not appropriate in the matter.” (Id. at 10.)
- i. Hyman submitted bill for services rendered as support for prevailing-party attorney’s fees. (Certification of Donato, Hyman v. Jersey City, No. GRC 6477-13, (August 14, 2013).)

- ii. Jersey City disputes the reasonableness of petitioner's fee application. (Brief of respondent, Hyman v. Jersey City, No. GRC 6477-13 (Sept. 12, 2013).)
16. On July 17, 2015, respondent submitted Vol. I and Vol. II of "Privilege Documents" that Jersey City withheld from its response to Hyman's OPRA request under claim of either ACP or the OPRA inter-agency and intra-agency ACD exemption.
 - i. The documents within Vol. I-II consist of emails, letters, memos, faxes, drafts, and ordinances.
 - i. Vol. I-II are non-consecutively paginated and the individual documents therein are identified by their non-consecutive page numbers.
 - ii. Respondent submitted the Third Index (Index) that identified Jersey City employees and attorneys and provides a description of the individual documents within Vol. I-II and the privilege or exemption claimed.
 - iii. Hyman does not, on the face of the motion papers, dispute that the contents of Vol I-II and the Index are factually accurate.
17. The Index identifies the following individuals as attorneys:
 - i. Monahan has been Respondent's First Assistant Corporation Counsel since November 2004.
 - ii. John, "Jack", Curley (Curley), Jacquelyn Middleton (Middleton), Jennifer Bogdanski (Bogdanski), and Kim Krynicki (Krynicki), are "Outside Legal Counsel" to respondent;
 - iii. William Matsikoudis (Matsikoudis), Carmine Scarpa (Scarpa), and Alexander Booth (Booth) are in-House Legal Counsel"; and John Hamill, Jr. (Hamill), is identified as "Other Legal Counsel".
 - iv. Charles Montange was retained as special outside counsel by respondent specifically for litigation before the STB.
 - i. Montange is associated with the non-profit group, Rails to Trails.
 - ii. Andrea Ferster (Ferster) is legal counsel for Rails and Trails.
 - A. Ferster is an associate of Montange and participated in the STB matter.

18. The Index identifies the following individuals as Jersey City employees:

- i. Gregory Corrado (Corrado) is Jersey City's Assistant Business Administrator;
- ii. Douglas Greenfeld (Greenfeld), a Supervising Planner with its Department of Housing, Economic Development and Commerce (HEDC);
- iii. Barbara Netchert (Netchert), Director of the HEDC;
- iv. Paul Hamilton (Hamilton), Executive Director of the Jersey City Redevelopment Agency (JJCDA), an "Autonomous Agency of the City;"
- v. Elena Bustamante (Bustamante);
- vi. Robert Cotter (Cotter);
- vii. Tyshammie Cooper (Cooper);
- viii. Brian O'Reilly (O'Reilly);
- ix. Melissa Sanchez (Sanchez);
- x. Dan Wrieden (Wrieden);
- xi. Claire Davis (Davis);
- xii. Maryann Bucci-Carter (Carter);
- xiii. Christopher Fiore (Fiore);
- xiv. Brian O'Reilly (O'Reilly);
- xv. Kristen Russel (Russel);
- xvi. Mark Munley (Munley);
- xvii. Rachel Kennedy (Kennedy);
- xviii. Cynthia Hadjiyannis (Hadjiyannis);
- xix. Benjamin Delisle, (Delisle);
- xx. David Donnelly (Donnelly)

19. Stephen Gucciardo is a member of the Coalition.

20. Several names that have been copied in the email correspondence have not been identified in the Index as attorneys, Jersey City employees or otherwise.

21. Other individuals that are not identified by the Index key:

- i. Karen Yanick
- ii. Naomi Hsu
- iii. Isabele Procaccino

- iv. Jack Berne
 - v. Ed Toloza
 - vi. In camera review shows the following individuals acted as Corporate Counsel for Jersey City:
 - i. Tom Fodice
 - ii. Martin Dolan
 - iii. Ray Reddington
 - vii. In camera review shows the following individuals were employees of Jersey City:
 - i. Donovan Bezer
 - ii. Betty Kerns
 - iii. William Goble
 - iv. Jeffrey Wenger
 - v. Carl Czaplicki
 - viii. In camera review shows Vincent LaPaglia represented Jersey City Zoning Board of Adjustment.
 - ix. In camera review shows Jersey City retained Hugh A. McGuire, Jr and Paul T. Beisser as appraisers.
22. The Index does not provide cross reference to connect the named Jersey City employees with their respected email addresses.
- i. Maureen Crowley uses the email address Moher1@aol.com.
 - ii. Dan Wrieden uses the email address danw@jcnj.org.
 - iii. Robert Cotter uses the email address bobbyc@jcmj.org.
 - iv. Carmine Scarpa uses the email address cjscarpa@yahoo.com.
 - v. John Hamill, Jr. uses the email address jhamill@bkrjl.
 - vi. Christopher Fiore uses the email address FioreC@jcnj.org.
 - vii. Barbara Netchert uses the email address Barbara@jcnj.org.
 - viii. flbr@earthlink.net is not linked to an individual.
23. Respondent has provided the documents marked Item Nos: 1123, 1124, 2571, 2604, 2845, 3078, 3104, 3166, 3167, 3184, and 3228.

Documents submitted for in camera review

I. Attorney Client Privilege Assertions

1. Jersey City claims Attorney Client Privilege (ACP) regarding documents marked as:
 - i. Item Nos.: 42, 69, 83, 929, 934, 935, 943,944, 945, 946, 947, 958, 959, 960, 1161, 1163, 1164, 1165, 1166, 1167, 1173, 1178, 1179, 1182, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1217, 1225, 1226, 1232, 1233, 1234, 1239, 1244, 1245, 1255, 1260, 2018, 2258, 2264, 2269, 2070, 2306, 2307, 2308, 2310, 2314, 2336, 2338, 2344, 2393, 2397, 2398, 2412, 2423, 2462, 2463, 2507, 2580, 2581, 2584, 2585, 2600, 2610, 2617, 2626, 2643, 2647, 2649, 2716, 2969, 2974, 3039, 3040, 3047, 3130, 3132, 3163, 3165, 3169, 3172, 3199, 3200, 3216, 3222, 3224, 3241, 3243, 3246, 3253, 3283, 3287, 3288, 3289, 4004, 4006, 4007, 4009, 4011, 4012, 4014, 4022, 4023, 4025, 4026, 4027, 4028, 4029, 4036, 4037, 4038, 4039, 4040, 4041, 4043, 4044, 4045, 4046, 4047, 4048, and 4049.
2. Item No. 42 is an email, dated September 14, 2006, from Greg Corrado to Douglas Greenfeld discussing funding for the Embankment. Crowley, Naomi Hsu (not identified by the Index), and Robert Cotter are copied on the email.
 - i. Item No. 85 and Item No. 935 include the same email as Item No. 42.
3. Item No. 69 is an email correspondence occurring on October 16, 2006 originating from Crowley. The Crowley email copies Greenfeld, Netchert, Wenger, Naomi Hsu, Cotter and William Goble. The responding email is from Greenfeld to Corrado. The correspondence discusses funding for the acquisition of the Embankment properties.
 - i. The email body of Item No. 69 is identical to Item No. 935 and 1215.
 - ii. Item No. 935/1215 has a CC line missing that is present in Item No. 69 that shows Netchert, Jeffrey Wenger, Naomi Hsu, Cotter and a “William....”
 - iii. Jersey City claims ACD as to Item No. 1215.

4. Item No. 83 is an email, dated September 12, 2006. It is the earlier email in the email chain within Item No. 42 and is a duplicate of Item No. 943.
5. Item No. 929 is an email dated October 31, 2006 from Barbara Netchert, to Monahan and Sanchez. Cotter and Curley are copied.
6. Item No. 934 is a duplicate of Item No. 83.
7. Item No. 935 is a duplicate of Item No. 69 and Item No. 1215.
8. Item No. 943 is an email, dated October 30, 2006, from Monahan to Netchert and Sanchez where Curley and Cotter are copied. Monahan provides her opinion concerning an OPRA request.
9. Item No. 944 is an email, dated February 13, 2006, from Curley to Monahan. Email addresses of "bobbyc@jcmj.org, danw@jcnj.org, cjscarpa@yahoo.com and jhamill@bkrjl...." are copied. These emails address are not identified by cross reference in the Index. The email provides legal impressions concerning possible encumbrances on the Embankment properties.
 - i. The list of copied email address is cut off in the document.
10. Item No. 945 is an email, dated June 21, 2006, from Curley to Cotter and Wrieden with copy to Monahan and "cjscarpa@yahoo.com and jhamill@bkrjl...." that appear to be Jersey City employees or in-house council. In the email Curley provides recommendations regarding the active litigation between Hyman and Jersey City.
 - i. The list of copied email addresses is cut off in the document.
11. Item No. 946/1173 is an email, dated June 22, 2006, from Curley to Monahan. Email addresses of bobbyc@jcmj.org, danw@jcnj.org, cjscarpa@yahoo.com and "jhamill@bkrjl....", are copied. Curley provides recommendation concerning a pending motion for summary judgment.
 - i. The list of copied email addresses is cut off in the document.
 - ii. The document is identical to Item No. 1173.
12. Item No. 947 is an email, dated September 7, 2006, from Curley to Greenfeld with Monahan and Cotter copied. Curley provides his impressions of the legal history concerning the Embankment properties.
 - i. The CC list of email addresses is cut off.

13. Item No. 958 is email correspondence, dated May 19, 2006, between Monahan, Netchert and Davis. The email relays legal recommendations from outside counsel to employees.
14. Item No. 959 is an email, dated October 25, 2006 from Bogdanski to Davis with Monahan and Curley copied. The letter discusses interrogatories.
15. Item No. 960 is an email correspondence, dated November 29, 2006, from Bogdanski to Davis. The letter discusses interrogatory answers from Item No. 959.
16. Item No. 1123, contains emails, dated June 23, 2005, from Wrieden to Delisle. The emails discuss advice and recommendation regarding an assessment of property.
17. Item No. 1124, is an email, dated June 23, 2005, from Delisle to Wrieden. The email is a continuation of the conversation in Item No. 1123.
18. Item No. 1161 is an email, dated February 9, 2006, from Curley to Monahan. The email discusses legal procedural issues.
19. Item No. 1163/4022 is an email, dated February 13, 2006, Curley provides recommendations to Monahan concerning encumbrances that would affect the Embankment. The email is copied to Cotter, Wrieden, Scarpa, and Hamill.
 - i. The CC list is cut off by the document.
 - ii. Item No. 1163 and Item No. 4022 are identical.
20. Item No. 1164 is an email, dated February 21, 2006, from Bogdanski to Monahan and Cotter regarding a motion to stay filed by Hyman in a Hudson County Law Division case, HUD-L-4908-05. The email is copied to Krynicki and Curley.
 - i. The document cuts off the end of the recipient heading.
21. Item No. 1165 is an email, dated February 21, 2006, from Montange to Bogdanski where Krynicki and Curley are copied. The email is Montange's response to the email in Item No. 1164. The email is marked as "Priv" and provides Montange's impression of Hyman's positions regarding the STB litigation.
22. Item No. 1166/4023 is an email, dated February 21, 2006, from Curley to Cotter and Wrieden copied to Monahan, Scarpa and Hamilton. The letter provides Curley's opinions as to the Embankment litigation.
 - i. The Copied line is cut short in the document.
 - ii. Item No. 1166 and Item No. 4023 are duplicates.

23. Item No. 1167 is an email, dated February 22, 2006, from Monahan to Montange, Scarpa, Bogdanski, and Hamilton with copies to Curley and Krynicki. The email discusses the response to Hyman's motion to stay.
24. Item No. 1173 is duplication of Item No. 946.
25. Item No. 1178 is an email, dated July 21, 2006, from Curley to Monahan with Cotter, Wrieden, and Scarpa copied. The email discusses the status of legal proceedings and provides Curley's opinion.
26. Item No. 1179 is an email, dated July 21, 2006, from Monahan to Curley with Cotter, Wrieden, and Scarpa copied. The email discusses the status of legal proceedings.
27. Item No. 1182 is an email, dated September 7, 2006, from Curley to Greenfeld with Monahan and Cotter copied. The email discusses the status of legal proceedings and provides Curley's opinion.
28. Item Nos.: 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, and 1209, are email correspondence, dated November 13, 2006, between Monahan, O'Reilly, and Matsikoudis with Netchert and Procaccino copied. The emails discuss legal strategy. Procaccino has not been identified by the Index.
29. Item No. 1210 contains two emails. The first, dated November 10, 2006, is from Montange to Curley and Crowley. It is marked Joint Defense Privilege and provides Montange's impression on the matter before the STB. The second email, dated November 13, 2006, is from Curley to Monahan with copy to Netchert. Curley provide recommendations contingents on the STB ruling.
30. Item No. 1217 is email correspondence, dated October 4, 2006, through October 5, 2006, from Montange to Curley and forwarded to Monahan with Netchert and Middleton copied. The email's CC list is cut-off and does not show other email addresses that may have been copied. The email contains the status of the condemnation action filing regarding the Embankment.
31. Item No. 1225 is an email, dated October 5, 2006, from Netchert to O'Reilly with Monahan copied. The email discusses keeping O'Reilly in the "loop."
32. Item No. 1226 is identical to Item No. 1217.

33. Item No. 1232 is an email, dated May 19, 2006, from Netchert to Monahan and Davis. It is a response to the email in Item No. 958, and is inclusive of the Item 958.
34. Item No. 1233 is identical to Item. 958.
35. Item No. 1234 is an email, dated May 19, 2006, from Davis to Netchert, with Monahan copied. The email discusses the response to Hyman's attorney.
36. Item No. 1239 is an email, dated February 28, 2006, from Monahan to Netchert with Greenfeld copied. Monahan considers the use of a case law in the application concerning the Embankment properties.
37. Item No. 1244 is an email, dated February 17, 2006, from Bogdanski to FioreC@jcnj.org copied to Barbara@jcnj.org. Bogdanski references information found in her files that relates to underlying dispute between Hyman and Jersey City.
38. Item No. 1245 is an email, dated February 17, 2006, from Bogdanski to FioreC@jcnj.org. The email discusses the underlying dispute between Hyman and Jersey City.
39. Item No. 1255 contains two emails. The first dated March 9, 2005, 7:42 PM, from Curley to Netchert and Crowley, and other recipients not shown by the document. The email provides directive from Curley to Jersey City concerning the Embankment. The second email is dated March 9, 2005, 4:47 PM from Netchert to flbr@earthlink.net O' Reilly, Ed Toloza, Corrado, and Mariano Vega. The email discusses the availability of original records concerning the property.
 - i. Ed Toloza and flbr@earthlink.net have not been identified by the Index.
40. Item No. 1260 is an email, dated February 17, 2006, from Bogdanski to Fiore. Bogdanski gives Jersey City employees directives that concern the Embankment litigation.
41. Item No. 2018 is a copy of a facsimile dated September 30, 2005. The facsimile is Hyman's notice of an Order to Show Cause against Jersey City. The copy contains handwritten notes.
42. Item No. 2258 is a letter, dated January 18, 2006, from Curley to Monahan with copy to Cotter, Wrieden, Scarpa, Hamill and Montange. In the letter Curley provide

the status of litigation concerning the one of the cases before the Hudson County Superior Court and the STB matter.

43. Item No. 2264 is a letter, dated December 16, 2005, from Curley to Montange with copy to Monahan. Curley provides background information to facilitate Montange's research regarding the STB matter.
44. Item No. 2269 is the cover page of a memorandum, dated January 9, 2006, from Monahan to Matsikoudis with Vega and O'Reilly copied. Carl Czapliccki is copied. Czapliccki is not identified in the Index. The enclosure includes Item No. 2070.
45. Item No. 2270 is an eight (8) page letter, dated January 3, 2006, from Curley to Monahan with Hamill, Scarpa, Cotter, and Wrieden copied providing Curley's legal opinion.
46. Item No. 2306 is dated November 20, 2005 from Scarpa to Monahan, Tom Fodice and Matsikoudis. Tom Fodice is not identified in the Index.
47. Item No 2307 is a letter dated December 8, 2005 from Bogdanski to Montange with Monahan copied. The letter provides Montange background to facilitate his representation of Jersey City.
48. Item No. 2308 is a letter, dated December 6, 2005, from Curley to Montange with Monahan copied. The letter provides Montange background to facilitate his representation of Jersey City.
49. Item No. 2310 is a letter, dated November 16, 2005, from Middleton to Bill Delaney. The Index identifies Delaney as a Dresdner Robin consultant.
50. Item No. 2314 is a memo, dated November 30, 2005, from Scarpa to Matsikoudis copied to Monahan, Tom Fodice, and Martin Dolan. The Index does not identify Fodice and Dolan but the document identifies them as corporate counsel.
51. Item No. 2336 is a letter, dated September 14, 2005, from Middleton to Monahan. The letter provides Middleton's opinion concerning the Embankment properties.
52. Item No. 2338 is email correspondence occurring from September 19, 2005 to September 20, 2005, originating from Crowley to Monahan then forwarded from Monahan to Matsikoudis and Espinal. Monahan considers hiring outside counsel.
53. Item No. 2344 is the cover sheet of a facsimile, dated September 6, 2005, to Monahan from Curley copied to Vincent LaPaglia.

54. Item No. 2393 is a letter, dated February 23, 2005, from Curley to Monahan with Crowley copied. Curley provides his legal opinion.
55. Item No. 2397 is memorandum, dated February 22, 2006, from Monahan to Netchert and Goble. Goble is not identified in the Index, but the document provides the title of City Engineer.
56. Item No. 2398 is a facsimile, dated February 21, 2006, from Montange to Curley, Monahan, Ferster, and Crowley. Montange provides his opinion as to discovery request.
57. Item No. 2412 is a letter memorandum, dated February 7, 2006, from Curley to Monahan with Hamill, Scarpa, Cotter, and Wrieden copied. The letter provides the status of the Embankment regarding the two Hudson County Superior Court cases, Docket Nos. HUD-L04683-05 and HUD-L-4908-05.
58. Item No. 2423 is a letter, dated January 3, 2006, to Monahan from Curley with Hamill, Scarpa, Cotter, and Wrieden copied. Item No. 2423 is identical to Item No. 2270.
59. Item No. 2462 is an email, dated April 25, 2006, from Crowley to Montange with Curley, Bogdanski, Ferster, Monahan, and Matsikoudis copied. Crowley ask Montange for a legal opinion regarding the STB litigation.
60. Item No. 2463 is a draft of Rebuttal Statement for a matter before the STB.
61. Item Nos. 2580, 2581, 2584, 2585, are email correspondence, dated September 21, 2006, from Monahan to Corrado with Espinal and Matsikoudis copied. Jersey City's corporate counsel provides information regarding the appraisals and instructs to maintain confidentiality.
62. Item No. 2600 is a cover page to a memo, dated September 1, 2006, from Monahan to Curley. Monahan request a legal opinion from Curley.
63. Item No. 2604 has been disclosed.
64. Item No. 2610 is a letter, dated January 11, 2006, from Curley to Vega. The letter provides Curley's opinion concerning proposed Ordinance 05-170.
65. Item No. 2617 is a letter, dated August 23, 2006, from Curley to Matsikoudis with copy to Cotter, Wrieden, Davis, Monahan, Scarpa, and Hamill. The letter is a formal legal opinion letter from outside counsel to in-house counsel.

66. Item No. 2617 is a letter, dated August 23, 2006, from Curley to Matsikoudis with Cotter, Wrieden, David, Monahan, Scarpa, and Hamill copied. The letter provides Curley's legal opinion.
67. Item No. 2626 is a letter dated August 22, 2006, from Curley to Hugh McGuire and Paul Beisser. The letter appears to be incomplete as there is no closing to the letter.
 - i. The Index description identifies McGuire as an "appraiser."
 - ii. The Index does not identify Beisser.
68. Item No. 2643 is a letter, dated July 28, 2006, from Curly to Monahan, copied to Cotter, Wrieden, and Hamill. The letter provides Curley's recommendations and objections regarding the Hudson County Superior Court cases.
69. Item No. 2647 is a letter, dated July 26, 2006, from Middleton to Hugh McGuire. The letter discusses the appraisals of the Embankment properties.
70. Item No. 2649 is a memo, dated July 21, 2006, from Monahan to Scarpa with Reddington copied. The letter provides Monahan's opinion as to the liability of the maintenance of the Embankment property while ownership is under legal dispute.
71. Item No. 2716 is an email, dated December 23, 2005, from Crowley to Monahan, Curley, and Montange with Espinal copied. The beginning of the email is marked "PRIV & CONFIDENTIAL." The email discusses maps that have been dispatched to Jersey City's attorneys.
72. Item No. 2845 is the Curriculum Vitae of Andrew L Strauss and a memorandum (Strauss Memo) regarding the Embankment Properties. Jersey City has provided this document pursuant to the GRC order.
 - i. Duplications of Item 2845 appear in some form within Item Nos. 3200, 3216, and 3228.
73. Item No. 2969 is a letter, dated September 6, 2005, from Curley to Monahan. The letter provides Curley's legal opinion, specifically what procedural action Jersey City may take in the litigation.
74. Item No. 2974 is the itinerary for a meeting of the Coalition with City Staff, dated September 6, 2005. The document contains hand-written notes.

75. Item No. 3039 is an email correspondence, occurring on August 25-29, 2005, between Crowley, Donnelly, Cotter, and Monahan. Jersey City discusses whether to engage the Coalition in a meeting.
76. Item No. 3040 is an undated email from Monahan to Cotter with copy to barbarap.jcnj.org, Czaplicki, Berne, and Matsikoudis. The email contains Monahan legal opinion concerning the City decision to grant or deny Hyman's application for a sub-division of one of the Embankment properties.
77. Item No. 3047 is an email, dated August 19, 2005, from Crowley to Monahan and Donnelly and copied to Gucciardo. Crowley marks the email "PRIVILEGED" in the heading, and relays the legal opinions of Montange to Jersey City.
78. Item No. 3078 has been provided
79. Item No. 3104 has been provided.
 - i. Included in the Item No. 3104 is a Jersey City Law Department memorandum, dated June 6, 2005, from Scapa to Monahan. This is Corporate Counsel Monahan authorizes a resolution to engage engineers for the Embankment.
 - ii. Jersey City did not independently identify this document in the Index.
 - iii. It will be referred to as Item No. 3106.
80. Item No. 3130 is an email dated May 2, 2005, from Crowley to Monahan and Curley. Crowley request a legal opinion regarding issues pertaining to the Embankment.
81. Item No. 3132 is email correspondence, dated March 31, 2005, between Crowley, Monahan, and Curley with O'Reilly copied. The emails discuss hiring additional outside counsel regarding the Embankment properties.
82. Item No. 3163 is an email, dated April 5, 2005, from Crowley to Monahan. The email discusses hiring an attorney.
83. Item No. 3165 is an email, dated March 29, 2005, from Crowley to Monahan. The email relays the intentions of the Steering Committee.
84. Item 3166 has been provided
85. Item 3167 has been provided.

86. Item No. 3169 is a letter from Crowley to Monahan with Curley Copied. The letter is incorrectly dated as February 28, 2004. The actual date of the letter is February 28, 2005. The letter outlines the Coalitions position and objections to Curley legal opinions regarding the Embankment.
87. Item No. 3172 is a letter, dated February 18, 2005, from Curley to Monahan. The letter provides Curley's legal impressions regarding STB litigation.
88. Item No. 3199, is word processing document, dated February 9, 2005, from Crowley to Monahan and Curley. The subject line is "Re: Jersey City Embankment Acquisition Steering Committee Business." Item No. 3199 encloses Item No. 2845, a memorandum that has already been disclosed and provided.
89. Item No. 3200 is a facsimile cover page, dated February 10, 2005, from Monahan to Curley. The enclosures include duplicates of Item Nos. 3199, and 2845 (disclosed).
90. Item No. 3216 contains duplicates of two other documents. The first page of Item No. 3216 is a duplicate of Item No. 3199. The second page of Item No. 3216 contains the first page of Item No. 2845 (previously disclosed).
91. Item No. 3218 (not identified in the Index) is a facsimile, dated January 27, 2005, from Betty Kearns (not identified in the Index) of the Jersey City Division of Engineering and Transportation (DET) to Monahan. The facsimile cover page refers to pages two (2) and three (3). However only pages one, four and five are enclosed. Additionally, the cover shows the DET requesting a legal opinion from Monahan.
92. Item No. 3222/3224 is a memorandum, dated December 22, 2004, from Monahan to O'Reilly. Item No. 3222 has hand written notes, the letter request authorization for funding for acquisition of the Embankment properties.
93. Item No. 3228 is the Strauss Memo that has already been provided with additional Appendix and exhibits.
94. Item No. 3241/3243/3253 is a letter, dated September 20, 2004, from Curley to Monahan. The letter provides directives regarding the Embankment.

95. Item No. 3246 is a letter, dated September 17, 2004, from Monahan to Curley with copy to Cotter. The letter discusses Jersey City's options as to how to acquire the Embankment properties.
96. Item No. 3253 is a letter from Curly to Monahan, dated September 20, 2004, detailing the steps need to condemn the Embankment properties.
97. Item No. 3283 is an email, dated November 13, 2002, from Alex Booth to Monahan. The email discusses the legal taking of Embankment properties.
98. Item No. 3287, is an agenda, dated November 12, (no year provided), detailing legal issues to be discussed with the appraiser, McGuire Associates.
99. Item No. 3288 is a memorandum from Monahan to Donavan Bezer, Law Clerk (not Identified in the Index), requesting legal research.
100. Item No. 3289 is a letter, dated June 3, 2003, from Munley to Booth with Cotter and Kennedy copied. The letter requests a legal opinion regarding the Embankment.
101. Item No. 4004 is email correspondence, dated January 13, 2006, between Montange, Curley, Crowley, and Monahan. The emails discuss legal strategy concerning the Embankment properties involved in Docket No. HUD-L-4683-05.
102. Item No. 4006 is email correspondence, occurring January 6, 2006 and January 7, 2006, between Crowley and Curley with copy to Bogdanski. The email is marked privileged and Crowley seeks a legal opinion concerning the embankment.
103. Item No. 4007 is an email, dated July 21, 2006, from Curley to Monahan with Cotter, Wrieden, and Scarpa. The email discusses the status and legal dispositions of the Embankment litigation. The CC heading line is cut off by the document.
104. Item No. 4009 is an email, dated October 5, 2006, from Curley to Monahan with Netchert and Middleton copied. The email forwards Montange's opinion concerning condemnation of the Embankment. The CC heading line is cut off by the document.
105. Item No. 4011 is email correspondence, dated November 10, 2006, to November 13, 2006, between Montange, Curley, Crowley, and Monahan with Netchert

- copied. The email is marked Joint Defense Privilege and discusses the position Jersey City might take contingent on the STB ruling.
106. Item No. 4012 is email correspondence, dated January 9, 2006 through January 10, 2006, between Montange, Moher, Curley Monahan and Bogdanski. The email discuss preparation prior to filing suit with the STB.
 107. Item No. 4014 is email correspondence occurring February 26, 2006 through March 1, 2006. The correspondence is between Crowley, Montange, Curley, Bogdanski, Monahan, Matsikoudis, Ferster, Corrado and Procaccino
 108. Item No. 4025 is an email, dated April 23, 2006, from Montange to Curley and Monahan. The email contains Montange's impressions concerning the active STB litigation. The list of email addresses in the destination line is cut off.
 109. Item No. 4026 is an email, dated March 1, 2006, from Montange to Curley and Bogdanski. The email provides Montange's impressions of discovery items provided by Hyman. The list of email addresses in the destination line is cut off.
 110. Item No. 4027/4043 is an email, dated January 19, 2006, from Matsikoudis to Curley with Monahan copied. Matsikoudis ask for guidance regarding the STB filing.
 111. Item No. 4028/4036/4044 is an email, dated April 24, 2006, from Montange to Monahan and Curley, copied to Ferster. The email discusses active litigation. The list of email addresses in the destination line is cut-off.
 112. Item No. 4029/4037/4045 is an email, dated January 3, 2006, from Montange to Curley discussing legal strategy.
 113. Item No. 4038/4046 is an email, dated February 17, 2006, from Montange to Curley, Crowley, Monahan. Montange provides status updates and directives to Jersey City regarding the STB litigation. The list of email addresses in the destination line is cut off.
 114. Item No. 4039/4047 is an email, dated March 5, 2006, from Montange to Curley and Monahan. The body of the email addresses Crowley and Ferster. Montange provides directives and seeks information from Jersey City for the purposes of proceeding with active litigation.

115. Item No. 4040/4048 is an email, dated April 24, 2006, from Montange to Crowley, Matsikoudis, and Monahan with copies to Ferster. The email was marked privileged and provides status updates on the STB litigation. The list of email addresses in the destination line is cut off.
116. Item No. 4041/4049 is an email, dated March 25, 2006, from Montange to Crowley, Curley, and Bogdanski, copied to Monahan and Matsikoudis. Montange marks the email as privileged and provides his legal impressions of the ongoing STB litigation and provides the status of the case. The list of email addresses in the destination line is cut off.

II. Advisory, Consultative and Deliberative Assertions

1. Respondent claims the “advisory, consultative and deliberative” (ACD) exemption of the OPRA statute to the follow documents marked as:
 - i. Item Nos.: 102, 103, 104, 105, 964, 1071, 1072, 1078, 1081, 1082, 1139, 1143, 1145, 1215, 1228, 1258, 1259, 2590, 2601.
2. Item No. 102 is email correspondence, dated May 26, 2006, between Netchert and Greenfeld.
3. Item No. 103 is email correspondence inclusive of Item No. 102 with addition correspondence to Elena Bustamante dated May 26, 2006.
4. Item No. 104 is the originating email regarding Item Nos. 102-105. The email, dated May 26, 2006, is from Greenfeld to Netchert.
5. Item No. 105 is another correspondence inclusive of the emails in Item Nos. 102-104.
6. Item No. 964 is a fifteen-page draft of the redevelopment plan concerning the Embankment.
7. Item No. 1071 is an email, dated October 5, 2004, from Kennedy to Wrieden, Bucci-Carter, and Cotter. The email includes discussion about the redevelopment plain draft.

8. Item Nos. 1072 is an email, dated October 6, 2004, from Wrieden to Bucci-Carter, Cotter, and Kennedy. The email discusses editing to the Redevelopment plan, Item No. 964.
9. Item No.1078, is an email, dated December 12, 2002, from Kennedy to Wrieden and Cotter. The email discusses a meeting regarding issues facing the Redevelopment plan, Item 964.
10. Item No.1081, is and email, dated January 7, 2005, Kennedy to Wrieden and Cotter. The email discusses revision to the "final" draft of the Redevelopment plan, Item 964.
11. Item No. 1082, is an email, dated January 9, 2005, from Cotter to Wrieden and Kennedy. The email discusses revision to the "final" draft of the Redevelopment plan, Item No. 964.
12. Item No. 1139 is an email, dated September 15, 2005, from Wrieden to Cooper. The email discusses options regarding and application for a grant that might benefit the Embankment.
13. Item No. 1143 is an email, dated November 28, 2005, from Hadjiyannis to Wrieden. The email discusses recommendation regarding the application concerning the Embankment.
14. Item No. 1145 is an email, dated November 29, 2005, from Hadiyannis to Wrieden and an email addresses not identified by the Index. The email is copied to several email addresses not identified in the Index that have non-Jersey City domain names.
15. Item No. 1215 is an email correspondence occurring on October 16, 2006 originating from Crowley. Item 1215 is identical to Item No. 69.
16. Item No. 1228 is a duplicate version of Item No. 104.
17. Item No. 1259 is an email correspondence, dated from February 17, 2006- February 22, 2006, from Russel to Netchert. The emails discuss the response to an application concerning the Embankment. The emails are part of the same email thread in Item No. 1258 except Karen Yanik has been copied on the email. Karin Yanik is not identified by the Index

18. Item No. 2590 is a draft of a resolution set to take effect September 11, 2006. The resolution draft has revisions to endorse the review of the matter filed with the STB. The draft has handwritten notes, dated September 8, 2006.

19. Item No. 2601 is a draft of Ordinance Section 345-31, dated August 30, 2006.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

I. Summary Decision

N.J.A.C. 1:1-12.5 sets forth the rules governing motions for summary decision in an OAL matter, summary decisions may be rendered if:

the papers and discovery which have been filed, together with the affidavits, if any, show that there is no **genuine issue as to any material fact challenged** and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. . . . If the adverse party does not so respond, a summary decision, if appropriate, shall be entered.

[N.J.A.C. 1:1-12.5(b) (emphasis added).]

Summary decision by an administrative law judge is permissible if undisputed facts indicate that a particular disposition is required. In re Robros Recycling Corp., 226 N.J. Super. 343 (App. Div.), certif. denied, 113 N.J. 638 (1988). Summary decision is similar, if not identical, to summary judgment. The standards for the grant or denial of summary judgment are set forth in Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67 (1954). Those standards were subsequently modified by the New Jersey Supreme Court in Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995). Brill held:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential

materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Credibility determinations will continue to be made by a jury and not the judge. If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a “genuine” issue of material fact for purposes of Rule 4:46-2. . . . The import of our holding is that when the evidence “is so one-sided that one party must prevail as a matter of law,” . . . the trial court should not hesitate to grant summary judgment.

[142 N.J. 520 (Citations omitted).]

Since none of the underlying facts are in dispute and the parties agree to same, I **CONCLUDE** that no genuine issues of material fact exist that would preclude a summary decision.

II. Open Public Records Act

The Open Public Records Acts (OPRA) reflects a legislative determination that it is the “public policy” of the State that “government records shall be readily accessible for inspection, copying, or examination by the citizens of this State.” N.J.S.A. 47:1A-1; Mason v. City of Hoboken, 196 N.J. 51 (2008). A ‘Government record’, or ‘record’, is defined broadly 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 in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or

authority of the State or of any political subdivision thereof,
including subordinate boards thereof.
[N.J.S.A. 47:1A-1.1.]

“[E]mails fall within the scope of this expansive provision.” McGee v. Township of East Amwell, 416 N.J. Super. 602, 614 (App. Div. 2010) (citing Wilson v. Brown, 404 N.J. Super. 557, 563 (App. Div.) certif. denied, 198 N.J. 473 (2009) (considering an OPRA request for emails)). But, not all documents prepared by public employees are subject to OPRA. See O’ Shea v. W. Milford Bd. Of Educ. 391 N.J. Super. 609, 617 (App. Div. 2008) cert. denied, 198 N.J. 316 (2009) (finding and informal handwritten notes taken during a board meeting to assist in creating formal minutes was not subject to public access pursuant to OPRA).; c.f. Hunterdon Cnty. Policemen Benevolent Ass’n Local 188 v. Twp. Of Franklin, 286 N.J. Super. 389, 393 (App. Div. 1996) (holding invoices and billing submitted for payment are subject to public access pursuant to OPRA). While the accessibility of records is limited by OPRA’s “certain exemptions,” those limitations shall be interpreted in favor of the public’s right to access. McGee, supra, 416 N.J. Super. at 614; N.J.S.A. 47:1A-1. Additionally, government records may be excluded from disclosure by other statutory provisions or executive orders, or exempt from disclosure due to a recognized privilege or grant of confidentiality established in or recognized by the State Constitution, statute, court rule, or judicial decision. N.J.S.A. 47:1A-9(a-b).

Two such exemptions are pertinent to the instant in camera review. First, attorney-client privilege is a recognized privilege that may shield documents that otherwise meet the OPRA definition of government record from inspection or production. E.g., K.L. v. Evesham Twp. Bd. of Educ., 423 N.J. Super. 337, 352-53, (App. Div. 2011), certif. denied, 210 N.J. 108 (2012); Gannett N.J. Partners, L.P. v. Cnty. of Middlesex, 379 N.J. Super. 205, 218, (App. Div. 2005). Moreover, documents that fall within the scope of the work-product doctrine are also shielded from OPRA. Sussex Commons Assocs., LLC v. Rutgers, 210 N.J. 531, 548 (2012). This privilege extends to persons or parties who share a common interest in litigation. See Laporta v. Gloucester Cty. Bd. Of Chosen Freeholders, 340 N.J. Super. 254, 262-63 (App. Div. 2011). Second, government records

do not include intra-agency or inter-agency "advisory, consultative, or deliberative material [(ACD)]." N.J.S.A. 47:1A-1.1.

Here, respondent has withheld documents under claims of both ACP and ACD. OPRA intends the GRC have meaningful review of the basis for an agency's decision to withhold government records. Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346, 354, (App. Div. 2005). Moreover, the statute contemplates in camera review of the records that an agency withheld when such review is necessary to determine the validity of a claimed exemption or privilege. Ibid; N.J.S.A. 47:1A-6. Finally:

When a trial court reviews documents in camera, it must make specific determinations regarding [a parties]'s access to them, including an expression of reasons for the court's rulings. The trial court must examine each document individually, and explain as to each document deemed privileged why it has so ruled. [Seacoast Builders Corp. v. Rutgers, 358 N.J. Super. 524, 542 (App. Div. 2003).]

Accordingly, each item submitted in Vol I-II will be analyzed with respect to the claim of privilege asserted. However, for the sake of efficiency and clarity, duplicated document, documents that are part of a single conversation, and documents with similar subject matter have been group together for analysis. These groups are justified due to the close relationship between the documents that would make individual analysis needlessly redundant or confusing.

A . Attorney Client Privilege

OPRA exempts "any record within the attorney-client privilege" from its definition of a "government record." N.J.S.A. 47:1A-1.1. The attorney-client privilege in New Jersey is statutory. See N.J.S.A. 2A:84A-20; N.J.R.E. 504(1). The purpose of the attorney-client privilege is "to encourage clients to make full disclosure to their attorneys." Macey v. Rollins Envtl. Servs., Inc., 179 N.J. Super. 535, 539 (App. Div. 1981). It is well settled policy that confidentiality is an "indispensable ingredient in our legal system." In re Grand

Jury Subpoenas Duces Tecum Served by Sussex Cty., 241 N.J. Super. 18, 28 (App. Div. 1989). In order to pierce the privilege, there must be a (1) legitimate need of the evidence that has been shielded, (2) a showing of relevance and materiality and (3) "a fair preponderance of the evidence including all reasonable inferences that the information [cannot] be secured from any less intrusive source." See In re Kozlov, 79 N.J. 232, 243-44 (1979).

To assert the privilege, a party must show that there was: (1) confidential communication; (2) between lawyer and his client; (3) in the course of that relationship and (4) in professional confidence. N.J.S.A. 2A:84A-20; N.J.R.E. 504(1). Confidential communications are only those "communications which the client either expressly made confidential or which he could reasonably assume under the circumstances would be understood by the attorney as so intended." State v. Schubert, 235 N.J. Super. 212, 221 (App.Div.1989), certif. denied, 121 N.J. 597, 583 (1990).

The attorney-client privilege includes communications between corporate entities or public bodies and the attorney retained to represent it. In re Grand Jury, supra, 241 N.J. Super. at 28; Paff v. Division of Law, 412 N.J. Super. 140 (App. Div. 2010). "The privilege unquestionably extends to corporations which must act through agents, including its officers and employees." Macey, supra, 179 N.J. Super. 535 at 540; see also Upjohn Co. v. United States, 449 U.S. 383, 389 (1981). Logically, the privilege covers email exchanges, which are the most common form of communication used by corporate entities and their agents. See Seacoast Builders Corp. v. Rutgers, 358 N.J. Super. 524, 553 (App. Div. 2003). However, "a mere showing [that] . . . the communication was from client to attorney does not suffice, . . . the circumstances indicating the intention of secrecy must appear." State v. Schubert, 235 N.J. Super. 212, 220-21 (1989) (quoting McCormick on Evidence § 91 (Cleary ed., 2d ed. 1972)). Moreover, the attorney involved in the communication must be acting in the capacity of an attorney. See United Jersey Bank v. Wolosoff, 196 N.J. Super. 553, 563 (App. Div. 1984).

Acting in the capacity of an attorney becomes difficult to determine in the context of in-house counsel where the attorney may have several roles that mix business and legal advice. To be sure, communications which relate to business rather than legal matters do not fall within the protection of the privilege; but, the application of this rule is anything but formulaic. See *Metalsalts Corp. v. Weiss*, 76 N.J. Super. 291, 298-299 (Super. Ct. 1962) (holding that investigation by attorney, which could have been performed by any non-lawyer-corporate agent was not subject to attorney-client privilege); see also *Margulis v. Hertz Corp.*, 2017 U.S. Dist. LEXIS 28311, at *14 (D.N.J. Feb. 28, 2017). In *Metalsalts Corp.*, the court noted that the guiding inquiry asks if the action undertaken by the attorney is "peculiarly within the province of an attorney at law." Id. at 299 (citing *In re Selser*, 15 N.J. 393 (1954)). A simple question can be derived from *Metalsalts Corp.* that proves useful for distinguishing legal and business matters during in camera review. See *Ibid.* The court should ask whether the communication requires the expertise of an attorney; or, stated differently, is the attorney necessary to serve the primary purpose of the communication. See *Ibid.* While not controlling on New Jersey courts, Federal courts echo this principle:

[T]he court's inquiry is focused on whether the communication is designed to meet problems which can fairly be characterized as predominately legal. To prevent corporate attorneys from abusing the privilege by using it as a shield to thwart discovery, the claimant must demonstrate that the communication would not have been made but for the client's need for legal advice or services.

[*Leonen v. Johns-Manville*, 135 F.R.D. 94, 99, (1990)(quotations and citations omitted).]

Thus, a party claiming privilege concerning internal communications involving in-house counsel, must make a clear showing that the speaker made the communications for the purpose of obtaining or providing legal advice. *Craig v. Rite Aid Corp.*, Civil Action No. 4:08-CV-2317, 2012 U.S. Dist. LEXIS 16418, at *33 (M.D. Pa. Feb. 9, 2012) (citing *In re Sealed Cases*, 737 F.2d 94, (D.C.Cir.1984)).

In the instant matter, the communications under in camera review are dispersed among several Jersey City employees. As recognized in Macey, the attorney client privilege requires open communication to the client and, in the case of the municipal or corporate client, this includes the entity's employees. Supra, 179 N.J. Super. 535 at 540. To that end, when a legal communication is transmitted to an organizational client such as Jersey City, the presence of the organization's employees does not waive or breach confidentiality. Ibid. Thus, where in camera review shows the recipients of an email are employees or agents of Jersey City, the communication remains confidential.

Additionally, the issue is whether the communications regarding the acquisition of property by a municipality are covered by the attorney-client privilege. Although the purchase of land is normally a business decision, when significant questions as to the nature of the real property, rightful ownership, and encumbrances cloud the title, the business decision to acquire the land becomes intertwined with legal advice. Thus, where legal issues are sufficiently entangled with the acquisition of the of land, the communications among an entity's employees and attorneys are primarily legal in purpose because of the necessity for legal expertise. See Metalsalts Corp., supra, 76 N.J. Super. at 299. Accordingly, where in camera review reveals that Jersey City is relying on in-house or outside counsel's legal expertise regarding the acquisition of property, those communications will fall within the attorney-client privilege.

1. Work-Product Doctrine

The work-product doctrine protects from disclosure those documents and other tangible things that a party or a party's representative prepares in anticipation of litigation. Hickman v. Taylor, 329 U.S. 495 (1947). The work-product doctrine is rooted in the attorney client privilege and similarly shields documents from OPRA requests. N.J.S.A. 47:1A-9(b); Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 218, (App. Div. 2005). Moreover, the work-product doctrine extends to "the necessary intermediaries and agents through whom the communications are made." State v. Kociolek, 23 N.J. 400, 413 (1957).

Such "necessary intermediaries" have been held to include a psychiatrist retained by defense counsel, arson experts hired by defense counsel, a handwriting expert, and an engineering firm hired as a consultant for litigation assistance. See Ibid.; State v. Melvins, 155 N.J. Super. 316, 322-23 (App. Div. 1978), certif. denied, 87 N.J. 320, (1981); State v. Mingo, 77 N.J. 576, 584, (1978), Conforti & Eisele, Inc. v. Division of Building & Construction, 170 N.J. Super. 64, 69-70, (L. Div.1979). However, it is insufficient for the intermediaries to simply be agents of the client; rather, the principal-agent relationship must spring out of the attorney-client relationship. See Tractenberg v. Twp. of West Orange, 416 N.J. Super. 354, 376 (App. Div. 2010) abrogated on other grounds by, Ciesla v. N.J. Dep't of Health & Sr. Servs., 429 N.J. Super. 127, 144 (App. Div. 2012) (holding the documents produced by appraisers were not created in the course of an attorney-client relationship because the township's attorney did not authorize or order the appraisals.) Additionally, while communication between the attorney and agents are privileged, the factual elements of the agents' reports are not privileged. See Upjohn, supra, 449 U.S. 383 at 395.

In the instant matter, some communications were transmitted to individuals outside the employment of Jersey City. Jersey City required the consultation of external appraisers, surveyors, and engineers to assess the value of the Embankment properties. Several legal decisions, including whether to pursue litigation, depended on the value of the Embankment. Thus, outside counsel hired appraisers and other consultants to assist in the valuation of the Embankment. An agency relationship was created through outside counsel in preparation for and during active litigation. Thus, those communications are covered by the work-product doctrine. While the factual elements of the consultants' reports are not privileged, Jersey City's attorney's communications with those individuals are privileged.

2. Common interest exception

It has been recognized that 'the joint defense privilege' is not limited to criminal trials. The attorney-client privilege (ACP) extends to co-litigants in civil litigation where the interests of the parties sufficiently align. See In re State Com'n of Investigation Subpoena No. 5441, 226 N.J. Super. 461 (App. Div. 1988), certif. denied 113 N.J. 382 (1988).

Whether an action is ongoing or contemplated, whether the jointly interested persons are defendants or plaintiff, and whether the litigation or potential litigation is civil or criminal, the rationale for the joint defense rule remains unchanged: persons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims.

[Laporta v. Gloucester County Bd. of Chosen Freeholders, 340 N.J. Super. 254 (App. Div. 2001) (quoting In re Grand Jury, 89-3 and 89-4, John Doe 89-129, 902 F.2d 244, 249 (4th Cir.1990).]

Laporta, examined the common interest privilege in the context of the work product doctrine, and applied a three-prong test, later adopted by the New Jersey Supreme Court. Supra, 340 N.J. Super. at 262; O'Boyle v. Borough of Longport, 218 N.J. 168 (2014). To assert that a communication is covered by a common interest the parties must show the communication: (1) was made due to actual or anticipated litigation; (2) for the purposes of furthering a common interest; and (3) was made in a manner consistent with maintaining confidentiality against adverse parties. LaPorta, supra, 340 N.J. Super. 254 at 262.

The Supreme Court further clarified each prong that: (1) it is not required that actual litigation have commenced at the time of the transmittal of communications; (2) a common interest need not be identical for the privilege to apply; and (3) confidentiality exists unless a party show a conscious disregard of regarding of maintaining confidentiality. O'Boyle, supra, 218 N.J. at 200. Moreover, the common interest doctrine applies equally to both ACP and the work-product doctrine. O'Boyle, supra, 218 N.J. 191.

Respondent relies on the common interest doctrine in support of its ACP claims regarding all communications in question involving Crowley. In asserting the ACP, respondent notes that the Coalition, of which Crowley is a member, is a co-petitioner with Jersey City in the January 2006 matter filed with the STB; and that Hyman is an adversary in that case. It is petitioner's position, generally, that respondent's assertions are not sufficiently specific to support its claim of the ACP. Hyman also notes that the pertinent parties have been, and are, involved in various litigation in several venues.

Here, the issue is whether the Coalition and its main representative, Crowley, fall within the common interest exception. Crowley's involvement in communication does not automatically destroy ACP confidentiality. If the communication meets the three-prong test of Laporta the communication will remain privileged. Supra, 340 N.J. Super. 254. The second prong can easily be dispensed because the Coalition and respondent's stated position is that the Embankment properties should be purchased by respondent for the creation of a public park. The Coalition and respondent plainly share a common interest.

The first and third prongs are more dependent on the facts of the email. The Coalition is a co-litigant with Jersey City in the matter before the STB filed in January 2006. The further in time the email is from litigation, the less plausible the communication was made in anticipation of litigation. The third prong is also factually dependent because an email's confidentiality depends on the individuals involved and the context of the email. See Stengart v. Loving Care Agency, Inc., 201 N.J. 300, 311-12 (2010). Communication through email remains confidential as long as the individuals addressed or copied in the email remain within the circle of Jersey City's employees and in-house or outside counsel. In most instances Crowley's participation does not preclude the document from remaining privileged. The emails involving Crowley, at the outer limits, are transmitted only a year prior to litigation. The majority of emails are transmitted in a manner that maintains confidentiality. Notwithstanding, the analysis shall be done on a document-by-document basis. Seacoast Builders Corp., supra, 358 N.J. Super. 524 at 542.

3. In Camera Review

Where attorney client privilege is alleged, the judge shall make an in camera inspection of the documents for which the privilege is claimed. See In re Environmental Ins. Actions, 259 N.J. Super. 308, 319 (App. Div. 1992). It is not sufficient for a custodian of records to submit a conclusory recitation of the exemption raised when denying an OPRA request. Paff v. N.J. Dep't of Labor, supra, 379 N.J. Super. 346, 355 (App. Div. 2005). There “must be an explanation, which is sufficient, without revealing information itself privileged or protected, to ‘enable other parties to assess the applicability of the privilege or protection. Id; at 353 (citing MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 551 (App. Div. 2005)).

Respondent argues against disclosure, based on the ACP, to documents Items Nos.: 42, 69, 83, 929, 934, 935, 943, 944, 945, 946, 958, 959, 960, 1165, 1167, 1178, 1179, 1182, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1217, 1225, 1226, 1232, 1233, 1239, 1244, 1255, 1260, 2018, 2258, 2264, 2269, ,2270, 2306, 2307, 2308, 2310, 2314, 2336, 2338, 2344, 2393, 2397, 2398, 2412, 2423, 2462, 2463, 2507, 2580, 2581, 2584, 2585, 2600, 2610, 2617, 2626, 2643, 2647, 2649, 2716, 2969, 2974, 3039,3040, 3047, 3130, 3132, 3163, 3165, 3169, 3172, 3199, 3200, 3216, 3222, 3224, 3241, 3243, 3246, 3253, 323, 3287, 3288, 3289, 4004, 4006, 4007, 4009, 4011, 4012, 4014, 4022, 4023, 4025, 4026, 4027, 4028, 4029, 4036, 4037, 4038, 4039, 4041, 4043, 4044, 4045, 4046, 4047, 4048, and 4049.

The contested items are communications, in the form of letters, e-mails, facsimiles and memoranda regarding various matters concerning the Embankment properties. The court must “‘make specific determinations’ regarding access to documents under claim of privilege and provide an “expression of reasons for the court's rulings.” Payton v. New Jersey Turnpike, 148 N.J. 524, 550 (1997). Accordingly, each document must be examined individually to determine whether a privilege or exemption applies. Ibid; Seacoast Builders Corp. v. Rutgers, 358 N.J. Super. 524, 542 (App. Div. 2003).

The basis for the decisions regarding the documents is set forth below:

a. Non-Privileged Documents

Item Nos.: 42, 83/934

Item No. 42, 83, and 934 represent email correspondence between Greenfeld and Corrado, dated September 14, 2006. Item No. 42 is the response to Item No. 83 and shows the email was copied to Crowley, Cotter, and Naomi Hsu; whereas Item No. 83 was only copied to Crowley and Cotter. Item No. 934 is a duplicate of Item No. 83. The Index does not identify Naomi Hsu as an attorney or employee of Jersey City.

The subject matter discusses funding required to acquire the 6th Street Embankment. The “Embankment” includes the properties of the underlying litigation where Jersey City and the Coalition filed in January 2006 as co-petitioners adverse to Hyman’s interest. No attorneys are present in the email thread. The emails are devoid of any legal discussion concerning pending or active litigation.

Jersey City has claim ACP regarding the above emails. Under a ACP analysis, the individuals with whom the communication is shared and subject matter of the communication is critical. For the privilege to exist, the party claiming the privilege has the burden to show the communication contains legal advice that was to be kept confidential. Jersey City has not identified the position of Naomi Hsu. Moreover, nothing in the emails suggests that the communications are legal advice. The background of purchasing the property will frequently be involved in litigation, but the privilege will not extend to protect a communication regarding the process of obtaining funding for that property. The preparations to purchase land are too attenuated from the issues of litigation to be considered the work or recommendation of an attorney.

Accordingly, Jersey City has not shown that the emails were confidential or a legal communication because it failed to identify Naomi Hsu and show the subject matter of legal advice between a lawyer and client. Therefore, Item Nos. 42 and 83/934 shall be disclosed.

Item Nos.: 69/935, 1215

Item No. 69/935 contain two emails occurring on October 16, 2006. The earlier email from Crowley, time stamped October 16, 2006, 1:58 P.M., is addressed to Jeffrey Wenger and Naomi Hsu with copies to Greenfeld, Cotter and Goble. The Index does not identify Wenger or Hsu. The later email, time stamped 2:30 P.M., included the Crowley email and is from Greenfeld to Corrado. Both emails discuss funding required to purchase the Embankment properties. It should be noted that Item No. 69/935 is identical to Item No. 1215 with respect to the email body's subject matter. However, Jersey City claims the ACD exemption with respect to Item No. 1215.

In asserting the ACP, Jersey City references the pending STB matter. As respondent notes, Jersey City and the Coalition have shared interests regarding their opposition to development of the properties. It is reasonable to infer that Crowley, in her position as coordinator, is involved in those efforts. However, on the face of the emails in question, the discussion of funding sources for possible acquisition of the properties by respondent is too attenuated to be considered legal in purpose.

Here, respondent has not explained how this communication meets the requirement of ACP. A custodian of records cannot rely on mere recitation of the privilege raised when denying an OPRA request. See Paff v. N.J. Dep't of Labor, supra, 379 N.J. Super. 346, 355 (App. Div. 2005). Additionally, the positions of Cotter, Hsu, "Jeff", Wenger, and Goble are not specified in the Index. Therefore, it cannot be conclusively determined that communication was confidential to Jersey City employees. Accordingly, Items No. 69/935 shall be disclosed.

Item No. 1225

Item No. 1225 is an October 5, 2006 email from Netchert to O'Reilly with Monahan copied. In the email Netchert speaks about bringing O'Reilly into the "loop." Monahan is copied on the email. The email is devoid of any legal advice. The author is not an attorney

and the subject matter is not legal in nature. The act of copying in-house counsel on an email does not invoke ACP. Accordingly, Item No. 1225 shall be disclosed.

Item No. 1255

Item No. 1255 contains two emails. The first email, dated March 9, 2005, 7:42 PM, is from Curley to Netchert and Crowley. As destination heading is cut off by the document, other individuals may have been in receipt of the email. Curley provides recommendation as to the geotechnical investigation study done on the Embankment properties. This email appears to be within the same chain as the earlier second email.

The second email is dated March 9, 2005, 4:47 PM from Netchert to flbr@earthlink.net, O' Reilly, Ed Toloza, Corrado, and Mariano Vega. The communication is not covered under ACP. The purpose of the email is not primarily legal. Netchert, the author of the email is not an attorney, and she is not relaying any directive from an attorney, but informing other Jersey City employees about the status of Jersey City's internal files. Moreover, even if ACP did apply, the recipients of the email suggest confidentiality was breached. The email address, flbr@earthlink.net, and the individual Ed Toloza have not been identified by the Index. Jersey City has not satisfied its burden to claim privilege. Accordingly, Item No. 1255 shall be disclosed.

Item No. 3039

Item No. 3039 is an email correspondence from August 25-29, 2005, between Crowley, Donnelly, Cotter, and Monahan. Jersey City considers whether to engage the Coalition in a meeting. The communication contains no legal advice. On its face, the email does not show that the communication is made in anticipation of litigation. While the Coalition has been in communication with Jersey City regarding the Embankment since early 2005, the subject matter of the communication cannot be considered a legal communication that fits within even the wider circle of the Common interest exception. Accordingly, Item No. 3039 shall be disclosed.

Item No. 3199

Item No. 3199, is a document, dated February 9, 2005, from Crowley to Monahan and Curley. A duplicate appears in Item Nos. 3201, 3202, and 3216. The document appears to be in a word processing format. The Subject of the letter is "Re: Jersey City Embankment Acquisition Steering Committee Business" Jersey City claims ACP. Item No. 3199 encloses Item No. 2845, the Strauss Memo that has already been disclosed and provided. The subject matter of the document is authored by a future co-litigant written nearly a year prior to any formal litigation where the co-litigant is a party. Additionally, it is unclear from the letter whether the current position of the Coalition has aligned with Jersey City. Moreover, the subject line of the letter includes the "Steering Committee" which is an entity separate and distinct from the Coalition. Considering all these facts, the level of confidentiality is too ambiguous even to fall within the Common interest exception. Accordingly, Item No. 3199 shall be disclosed.

Item No. 3218

Item No. 3218 (not identified in the Index) is a facsimile, dated January 27, 2005, from Betty Kearns (not identified in the Index) of the Jersey City Division of Engineering and Transportation (DET) to Monahan. The Facsimile cover page refers to pages two (2) and three (3). However only pages one, four and five are enclosed. The cover sheet shows the DET requesting legal advice from Monahan.

In camera review shows that the cover sheet is a communication from a Jersey City employee requesting legal advice from in-house counsel Monahan. However, the attachments are only part of an unsigned title insurance contract with Conrail letter head. Pages two and three of the facsimile attachment are missing. The attachments that have been provided are not covered by the ACP because the contract is not a communication or impression of a Jersey City attorney. The communication may be covered by privilege but the facts within the communication are outside the scope of ACP. Accordingly, the cover sheet of Item No. 3218 shall not be disclosed. Pages 4, 5, and 1, labeled in Vol II as 3219, 3220, and 3221, respectively, shall be disclosed.

b. Privileged Documents

Several Items submitted for in camera did not present a close legal question as to the issue of privilege. The communications within the following Items: (1) contain sufficient indicia of legal advice throughout the documents itself, (2) have the involvement of in-house or outside counsel, (3) remained internal to Jersey City employees, (3) were made in confidence, and (4) were made for the purposes of obtaining or providing the opinion of an attorney at law.

Accordingly, I **FIND** Item Nos.: 929, 943, 958, 959, 960, 1232,1233, 1234, 1167, 1178, 1179, 1182, 1233, 1234, 1239, 1244, 1245/1260, 2018, 2258, 2264, 2269, 2270/2423, 2306, 2307, 2308, 2314, 2336, 2344,2397, 2412, 2463, 2507, 2580, 2581, 2584, 2585, 2600, 2610, 2617, 2643, 2969, 3106, 3200, 3222/3224, 3241/3243/3253, 3246, 3283, 3287, 3288, 3289, 4027/4043, 4029/4037/4045 shall not be disclosed.

The remaining Items presented issues warranting further discussion:

i. Confidentiality

To assert ACP in an OPRA matter, the custodian has the burden of showing the communication was made in a manner not inconsistent with maintaining confidentiality. The issue of whether that confidentiality was waived concerns the following documents, Item Nos.: 944, 945, 946/1173, 947, 1161, 1163/4022, 1164, 1165, 1166/4023, 1217/1226, 4007, 4009, 4025, 4026, 4038/4046, 4039/4047, 4040/4048, 4041/4049, 4028/4036/4044. In all these Items, either the email's recipient or copied heading, as submitted for in camera review, are cut off by the document. Additionally, in Item Nos. 1201-1209 and 3040 individuals that are not identified by the Index or the documents are included in the communication. Consequently, the court cannot directly determine the identity of every individual involved in the communication.

Although Jersey City enjoys a presumption that communications between attorney and client are confidentiality and the possibility waiver is insufficient to find an absence of ACP; it still must satisfy the burden of showing the prima facie elements of ACP. See

N.J.R.E. 504(3); Hannan v. St. Joseph's Hosp. and Medical Center, 318 N.J. Super. 22, 28 (App. Div. 1999) (holding that the judge has discretion in determining whether attorney client privilege applies). Had Jersey City's Index identified all the parties copied to the communication, there would be no question as confidentiality. But, the lack of identification gives rise to a plausible waiver, thus the court must weigh that plausibility against the other factual indicia that might support confidentiality revealed through in camera.

Here, review of the documents shows: (1) the emails all originate from Jersey City's outside counsel, Curley, or special outside counsel, Montange; (2) the individuals identifiable by the documents are all attorneys for Jersey City or Jersey City employees; and (3) the subject matter of the emails support that the communications were transmitted in confidence. Accordingly, sufficient indicia exist for a reasonable inference favoring the conclusion that the communications remain confidential.

As to documents 1201-1209 and 3040, the inclusion of two individuals not identified by Jersey City creates the possibility that confidentiality was not maintained. In conducting an in camera review the judge acts as the fact finder and applies the preponderance standard to the findings. See Hammock by Hammock v. Hoffmann-Laroche, 142 N.J. 356, 381 (1995).

Here, although the two individuals are not explicitly identified by the Index or the document, the context of the emails suggest the individuals are employees of Jersey City. In the emails, in-house counsel, Monahan, provides her opinion concerning the properties and the STB matter. It is unlikely counsel would waive privilege by including non-Jersey City employees in the email chain that only included outside counsel and other Jersey City employees. The more compelling inference—considering the several deficiencies in Jersey City's Index discussed below—is that Jersey City failed to identify these employees in the Index. Moreover, courts are reluctant to find a waiver even when confidentiality has been breached. State v. J.G., 261 N.J. Super. 409, 421 (App.Div.1993) (holding the "mere inadvertent production of a privileged document by the attorney does

not waive the privilege," even if the attorney was guilty of gross negligence). Accordingly, Jersey City has not waived ACP.

Nevertheless, the party seeking to pierce the privilege must have a legitimate need of the evidence that has been shielded, a showing of relevance and materiality, and a preponderance of evidence that the information could not be obtained in a less intrusive manner. See In re Kozlov, 79 N.J. 232, 243-44 (1979). OPRA's underlying policy goal means to serve government transparency. Mason v. City of Hoboken, 196 N.J. 51 at 62. OPRA does not intend "to replace or supplement the discovery of private litigants. Its purpose is to inform the public about agency action, not necessarily to benefit private litigants." MAG Entertainment, *supra*, 375 N.J. Super. 534 at 545. Moreover, "courts have inherent power to prevent abuse and protect the public officials involved." *Id.* at 546 (citing DeLia v. Kiernan, 119 N.J. Super. 581, 585, *certif. denied*, 62 N.J. 74, (1972)). Petitioner has not shown sufficient evidence to warrant piercing ACP.

Accordingly, the above documents are privileged and shall not be disclosed.

ii. **Work-Product Doctrine**

The issue is whether the document in Item No. 2310, 2626, 2647 are privileged under the work-product doctrine. The documents at issue are letters from Jersey City's outside counsels to real property appraisers and consultants. The letters provide authorization from outside counsel to perform appraisals in connection to litigation. Thus, the recipients of these letters are agents of outside counsel. See State v. Tapia, 113 N.J. Super. 322, 330 (1971) (holding that the attorney-client privilege extends to any person who is or may be the agent of either the attorney or client).

In Tractenberg, the Appellate Division found that appraisers were not covered under the attorney-client privilege because the municipality and not the town attorney authorized the appraisal. *Supra*, 416 N.J. Super. 354, 376. The instant matter is distinguishable from Tractenberg because outside counsel has authorized and initiated

the relationship with the third party. Where the relationship grows out of the attorney-client relationship, the communication with the third party will be covered by privilege; however, the factual element of appraisals will not be covered by ACP. Upjohn, supra, 449 U.S. 383 at 395.

Here, Item Nos. 2310, 2626, and 2647 only contain outside counsel's authorization. Accordingly, these letters are covered under the work-product doctrine, and shall not be disclosed.

iii. Common Interest Doctrine

The issue is whether the inclusion of Crowley, a member of the Coalition, waives that privilege or whether her involvement is covered under the Common interest exception in the communications within Item No.: 1210, 2338, 2393, 2398, 2462, 2716, 2974, 3047, 3130, 3132, 3163, 3165, 3169, 3172, 4004, 4006, 4011, 4012, 4014, 4025, 4038/4046, 4039/4047, 4040/4048, 4041/4049. In camera review shows that the following documents all contain legal advice transmitted to a client that would maintain confidentiality sufficient to establish ACP.

Each of the above documents meet the Common interest exception test set out in Laporta. See Laporta, supra, 340 N.J. Super. 254 at 262. First the disclosures are made in anticipation of litigation. Each of the above communications were transmitted within a year of litigation where the Coalition is a co-litigant. The subject matter of the communications plainly anticipates litigation and shared representation. Second, the position of Jersey City and the Coalition are sufficiently aligned because both parties seek to use the Embankment property for public open space. Additionally, Crowley's co-litigant interest is not limited to the STB case because the Hudson County cases have equal bearing on the common purpose of acquiring the Embankment for open public space. Third, email communication is a reasonable and acceptable method to transmit confidential communications. See Stengart, supra, 201 N.J. at 311-12; In re Asia Global Crossing, Ltd., 322 B.R. 247, 256 (S.D.N.Y. 2005). Several of the emails are marked as

privileged and in camera review revealed nothing to indicate a conscious disregard for the confidentiality of the communication. O'Boyle, supra, 218 N.J. at 200.

Accordingly, the above documents satisfy the common interest exception and shall not be disclosed.

B. Advisory, Consultative, Deliberative Exemption

Under OPRA, a "government record" does not include "inter-agency or intra-agency advisory, consultative, or deliberative material." N.J.S.A. 47:1A-1.1. When this exemption is invoked, a governmental entity may "withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated." Educ. Law Center v. N.J. Dep't of Educ., 198 N.J. 274, 285, (2009) (citing NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150, 95 S. Ct. 1504, 1516, 44 L. Ed. 2d 29, 47 (1975)). The government entity has the burden of proof to provide a reason that supports the ACD exemption.

In addition to a record being confidential within government agencies, the custodian claiming an exemption to the disclosure requirements under OPRA must initially satisfy two conditions:

1. The document must be pre-decisional, meaning that the document was generated prior to the adoption of the governmental entity's policy or decision; and
2. The document must reflect the deliberative process, which means that it must contain opinions, recommendations, or advice about agency policies.

[In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 84-85 (2000).]

The question remains as to what qualifies as deliberation. The crux of this inquiry is "how closely the material . . . relates to the formulation or exercise of . . . policy-oriented judgment or [to] the process by which policy is formulated." McGee v. Twp. of E. Amwell, 416 N.J. Super. 602, 619-20 (App. Div. 2010) (quoting Educ. Law Ctr., supra, 198 N.J. at 295). Two questions are key to finding this answer: first, whether the information sought

is part of the process leading to formulation of an agency's decision; second, whether the information sought will expose the deliberative aspects of that process. McGee, *supra*, 416 N.J. Super. at 620. Additionally, purely factual material that does not reflect the deliberative processes in any way does not fit the exemption. Integrity, *supra*, 165 N.J. at 85. However, "pre-decisional documents do not lose their protection from unwarranted public scrutiny merely because they may contain numerical or statistical data or information used in the development of, or deliberation on, a possible governmental course of action." Educ. Law Ctr., *supra*, 198 N.J. at 295.

Once the governmental entity satisfies the statutory requirements no further inquiry is required. Ciesla v. New Jersey Dep't of Health & Sr. Services, 429 N.J. Super. 127, 133 (2012).

Here, Respondent has claimed the OPRA deliberative exemption for Item Nos.: 102, 103, 104, 105, 964, 1071, 1072, 1078, 1081, 1082, 1139, 1143, 1145, 1215, 1228, 1258, 1259, 2590 and 2601. Several of these documents contain emails that are part of a greater email conversation or thread inclusive in other documents. For the sake of efficiency and clarity, documents that are part of a single conversation have been group together for analysis. These groupings are justified due the close relationship between the documents, which would make individual analysis needlessly redundant.

The basis for the decisions under in camera review is set out below:

1. **In Camera Review**

a. **Non-Privileged Documents**

Item No. 1145

Item No. 1145 is an email, dated November 29, 2005, from Hadjiyannis to Wrieden. The email was sent and copied to several email addresses not identified in the Index that have non-Jersey City domain names. From the review of the document it cannot be conclusively determined that Item No. 1145 is an inter/intra-agency document. Several email addresses have not been identified and may belong to individuals not employed by

Jersey City. The lack of a Jersey City domain address on the unknown emails supports this inference. The burden of proof is on Jersey City to show that this communication remained internal to Jersey City. Jersey City has failed to satisfy that burden. Accordingly, this document does not qualify as ACD and shall be disclosed.

Item No. 1215

Item No. 1215 is email correspondence, dated October 16, 2006, from Crowley to Wenger and Hsu copied to Greenfeld. Greenfeld forwarded the communication to Netchert, Wenger, Hsu, Cotter. Other individuals may have been included in the email because the document cuts off the copied or "CC" heading. It can be inferred from review of Item No. 69, which is nearly identical to Item No. 1215, that the "William" in Item No 1215 is William Goble in Item No. 69. Goble, Wenger, and Hsu are all persons included in the email that are not identified by the Index as Jersey City employees.

While the subject matter of the document may be pre-decisional and deliberative, this fact is unavailing for Respondent. The email originates from non-Jersey City individual, Crowley, and is copied to several individual not identified as Jersey City employees in the Index. It cannot be said that this document is an inter/intra-agency communication because Jersey City cannot show that Crowley and the individuals privy to the conversation are members of a Jersey City agency. Accordingly, Jersey City did not meet its burden to show ACD. Thus, the document shall be disclosed.

Item Nos.: 1258, 1259

Item No. 1259 is an email correspondence, dated from February 17, 2006- February 22, 2006, from Russel to Netchert. Item No. 1258 is a continuation of the email thread in Item No. 1259. The emails copied a Karin Yanik, who is not identified by the Index. The emails discuss the responses to an application concerning the Embankment. The subject matter of the email is irrelevant to the analysis. Jersey City has the burden to show that the communication is an inter/intra agency communication to claim ACD exemption. Jersey City did not identify Karin Yanik as a Jersey City employee or agent. Accordingly, Jersey City failed to meet its burden, and Item Nos. 1258 and 1259 shall be disclosed.

b. Privileged Documents

Item Nos.: 102, 103, 104, 105, 1228

Together, Item Nos. 102, 103, 104, 105, and 1228 represent email correspondence discussing the appropriate response to Petitioner's attorney's letter requesting a zoning permit regarding one of the properties of the underlying litigation. The correspondence takes place completely within Jersey City's agencies. First, the participants in the email and those copied are all Jersey City employees. Thus, this is an intra/inter-agency communication. Second, as the emails discuss future external conduct of the agency, the emails are inherently pre-decisional. Third, the emails contain recommendations and advice regarding Jersey City's response to Hyman's application. In this case, the email relates to the inter-office decision making process as to the final determination as to how Jersey City would comply with the request. Accordingly, the contents of these emails fit within the meaning of deliberation. Therefore, the emails in document Item Nos. 102, 103, 104, 105, and 1128 qualify as pre-decisional deliberative intra-agency communication under the ACD exemption. Accordingly, Item Nos. 102, 103, 104, 105, and 1128 shall not be disclosed.

Item Nos.: 964, 1071, 1072, 1078, 1081, 1082, 2590, and 2601

These Items all concern whether a draft should be included under the ACD privilege. On their face, the above documents represent drafts. In the Index, Respondent cites non-controlling case law supporting the proposition that drafts are included under a government agency deliberative process. United State v. Farley 11 F.3d 1385, 1389 (7th Cir. 1993). However, ample controlling opinion has spoken to the issue of the inclusion of drafts as pre-decisional. See, e.g., State v. Ballad, 331 N.J. Super 529, 551-53 (App. Div. 2000); Educ. Law Center, supra, 198 N.J. 274; Ciesla, supra, 429 N.J. Super. 127. "By their very nature, draft documents are preliminary and subject to further revision." Ciesla, supra, 429 N.J. Super. 127 at 140. Due to their non-final character, it makes logical sense to include drafts under the umbrella of the deliberative process privilege. Id.

In camera review reveals further factual support of the draft status of the above documents. Item Nos.: 1071, 1072, 1078, 1081, and 1082 are email correspondence that show the pre-decision and deliberative nature of the draft. Item No. 2601 is clearly stamped as a draft with redlining throughout the document. The subject matter of the emails discusses modification, and recommendation concerning the draft documents. The deliberation occurs confidentially between Jersey City employees. Thus, the draft document and the corresponding emails are pre-decisional and deliberative. See, e.g., State v. Ballad, 331 N.J. Super 529, 551-53 (App. Div. 2000); Educ. Law Center, supra, 198 N.J. 274; Ciesla, supra, 429 N.J. Super. 127 at 140. Accordingly, Item Nos. 964, 1071, 1072, 1078, 1081, 1082, 2590, and 2601 shall not be disclosed.

Item Nos. 1139 and 1143

Item Nos. 1139 and 1143 are emails transmitted between Jersey City employees. In camera review shows that the emails discuss options regarding an application for a grant that may benefit the Embankment. The emails are pre-decisional because they speak to subject matter yet to be included in Jersey City's application for the grant. Additionally, the emails are explicitly deliberative because they speak of "brainstorming" and recommendations that have yet to take the form of a policy decision by Jersey City. Accordingly, Item Nos. 1139 and 1143 qualify under the ACD exemption and shall not be disclosed.

III. Attorney's Fees

OPRA's fee-shifting provision states, "[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6. The GRC found the petitioner to be a prevailing party and entitled to attorney's fees. Hyman v. City of Jersey City, GRC Complaint No. 2007-118, Interim Order (September 25, 2012) <http://www.nj.gov/grc/decisions/pdf/2007-118.pdf>. In the instant matter, the issue is whether the requested fee is reasonable.

Petitioner's seeks \$34,242 in attorney's fees. (Petitioner's Cert., 1-7 (August 14, 2013) (98.21 hours * \approx \$350/hour = \$34,242).) Respondent has objected to the reasonableness of the fee, objecting to both the hours expended and the hourly rate. (Respondent's Brief, 4 (September 12, 2013).) Respondent requests a fee rate reduction to \$250 and a time reduction to either 82.61 or 72.16 total hours. Ibid. As to the subtraction of time, respondent first argues for a reduction of 15.6 hours as to time spent where petitioner's motions were denied. Second, respondent requests a subtraction of 10.45 hours contingent on whether the documents petitioner seeks are ultimately disclosed. These reductions result in a fee of \$20,552.50 or \$18,040, respectively.

The fee-setting process requires a determination of the number of hours reasonably expended multiplied by a reasonable hourly rate, called the "lodestar". Rendine v.

Pantzer, 141 N.J. 292, 334-35 (1995). The initial focus should be "the number of hours reasonably expended in the litigation." Singer v. State, 95 N.J. 487, 499, cert. denied, 469 U.S. 832 (1984).

Here, Jersey City argues that the hours Hyman's attorney spent in conjunction with the unsuccessful motions should be excluded.¹ (Respondent's Brief, 2.) However, courts reject a mathematical approach to ascertaining the hours because a fee should not be reduced merely because a party did not prevail in every motion. See, e.g., Death Penalty Moratorium v. N.J. Dep't of Corr., 185 N.J. 137, 153-54 (2005).

The salient question in the instant matter is whether the hours submitted in petitioner's application are reasonable. Hours are not reasonably expended if they are excessive, redundant, or otherwise unnecessary. Hensley v. Eckerhart, 461 U.S. 424, 434 (1983). Review of Ms. Donato's billing shows adequate itemization of times spent and the correlating description of the legal services completed. Nothing indicates excessive, redundant, or unnecessary billing. (Petitioner's Cert. 1-7.) Thus, Petitioner's application of 98.21 hours is reasonable. Accordingly, petitioner's hours will not be formulaically subtracted from the total calculation because he did not prevail in every motion.

Additionally, a reduction of hours is not warranted solely because a majority of the documents provided remains privileged. The New Jersey Supreme Court requires not merely a qualitative analysis that considers the number of documents received versus the number of document requested; but also, ***whether the purpose of OPRA is vindicated.*** Death Penalty Moratorium, supra, 185 N.J. 137 at 155 (emphasis added). Although the ratio of documents requested to documents received is a factor in the analysis, the court specifically rejects quantitatively driven determinations. Ibid.

¹ Respondent refers to preparation of various motions before the Appellate Division and the GRC describe in petitioner-attorney's application as: motion to supplement the record, motion to stay argument on appeal, motion for reconsideration.

In Death Penalty Moratorium, the custodian made unsupported claims of privilege that forced the requester to cast a wider net than otherwise might be required under OPRA. Ibid. The custodian resisted disclosure by providing only generalized claims of privilege that lacked specific information on a document-by-document basis. The custodian should have recognized that the undisclosed documents were clearly not privileged. Ibid. Considering the custodian's failure to properly claim privilege and the requester's success in obtaining hundreds of documents, the court awarded the full lodestar. Ibid.

Similarly, here, the custodian failed to present sufficient information to enable the requester to evaluate if the claims of privilege were legitimate. The Appellate Division characterized Jersey City as making "blanket designations" and inadequate "global characterizations" that were so vague it stymied meaningful review by the court. Hyman, supra, No. A-0789-10 2012 N.J. Super. Unpub. LEXIS 2032, at *17. Vol-I-II and the Index submitted to the OAL suffer the same shortcomings that were present at the appellate level. Accordingly, taking the qualitative approach and weighing Jersey City's inadequate claims of privilege, Hyman's attorney reasonably expended 98.21 hours.

The second focus turns to the reasonableness of the hourly rate. The court looks to "similar service by lawyers of reasonable comparable skill, experience and reputation in the community." Litton Indus., Inc. v. IMO Indus., Inc., 200 N.J. 372, 387 (2009). The court must be satisfied that the submitted hourly rate is fair realistic, and accurate, otherwise the court may make adjustments. Rendine, supra, 141 N.J. at 337. Additionally, the courts are guided by the factors enumerated in the Rules of Professional Conduct 1.5(a).²

Petitioner's counsel generally charges at a rate of \$350 per hour.³ Respondent cites to an unpublished Law Division case in support of its argument that \$275 per hour is the

² The factors considered: (1) the time and labor required; (2) the novelty and difficulty of the question involved; (3) the skill required to perform the legal service; (4) the fee customarily charged in the locality for similar legal services; (5) the amount involved and the result obtained; (6) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the service; (8) whether fee is fixed or contingent.

³ In one instance a reduced rate was applied for 0.5 hours of work, however the billing statement does not provide a reason for this reduction.

reasonable rate in the OPRA context. Rivera v. Office of Bergen, No. BER-L-4310-12, 2012 N.J. Super. Unpub. LEXIS 2752 at *11 (L. Div. Dec. 11, 2012). Respondent's reliance is, however, misplaced. Initially, Rivera is not controlling case law. Further, the Rivera court held only that the \$275 per hour rate sought in that case was within the acceptable range of reasonableness. Id. at *20. The court neither provided a specific range, nor spoke to whether a higher rate of \$350 per hour would be unreasonable. Ibid. Thus, the case does not preclude the possibility that an hourly rate of \$350 may be found to fall within the acceptable range of reasonableness in an OPRA case.

In Gensch v. Hunterdon County Clerk's Office, A-3578-10T3, 2012 N.J. Super. Unpub. LEXIS 1630, *8 (App. Div. July 9, 2012), a consolidation of three OPRA cases, the Appellate Division affirmed each trial court's finding that the rate of \$350 per hour was reasonable for a partner. Ms. Donato is a solo practitioner with specialization in land use that has practice law in New Jersey for more than thirty years. Her experience and expertise is more commensurate with that of a partner than an associate. Accordingly, petitioner's counsel's rate of \$350 per hour comports with the fee charged by other attorneys with similar experience and skill in the community performing similar legal services, and is therefore reasonable.

For the foregoing reasons, I **FIND** that the petitioner's request for attorney fees in the amount of \$34,242.00 is reasonable.

IV. Sanctions

An ALJ may also impose civil penalties under OPRA. See North Jersey Media Grp., Inc. v. State Office of the Governor, 451 N.J. Super. 282 (holding that the Superior Court in addition to the Government Records Council has jurisdiction to impose OPRA's civil penalties). "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 of \$1,000 for an initial violation"

N.J.S.A. 47:1A-11(a). Notably, the intent requirement goes to the knowledge of the individual “public official, officer, employee or custodian” not the knowledge of the public entity. See Bart v. City of Paterson Housing Authority, 403 N.J. Super. 609, 619 (App. Div. 2008).

OPRA does not provide a definition of “willful” or “knowing,” but these states of intent are not novel issues of law. A knowing and willful violation requires actual knowledge that the actions were wrongful and a positive element of conscious wrongdoing. Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 619 (App. Div. 2008) (citing Fielder v. Stinak, 141 N.J. 101, 124 (1995); Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)). The evidence must show a state of mind that is “intentional and deliberate, with knowledge of its wrongfulness, and not merely negligent, heedless, or unintentional.” Executive Comm’n on Ethical Stds. v. Salmon, 295 N.J. Super. 86, (App. Div. 1996) Additionally, the OPRA statute adopts the totality of the circumstances standard in a determination of knowing and willful conduct. N.J.S.A. 47:1A-11(a). The standard “encompasses all of the factors a reasonably prudent person would consider.” Clohesy v. Food Circus Supermarkets, 149 N.J. 496, 508 (1997).

Under OPRA, the custodian has a duty to provide any person with access to government records unless the record is exempt from public access. N.J.S.A. 47:1A-5. The reason for withholding a document must be specific. Newark Morning Ledger Co. v. New Jersey Sports & Exposition Auth., 423 N.J. Super. 140, 162 (App. Div. 2011). Courts will “simply no longer accept conclusory and generalized allegations of exemptions . . . but will require a relatively detailed analysis in manageable segments.” Loigman v. Kimmelman, 102 N.J. 98, 110, (1986) (quoting Vaughn v. Rosen, 484 F.2d 820, 826 (D.C.Cir.1973), cert. denied, 415 U.S. 977 (1974)).

Here, the evidence of record reveals that at the time of the request, denial, and complaint, the custodian for Jersey City was Robert Byrne. The GRC has no record that Byrne was previously found to have knowingly and willfully violated OPRA. Byrne’s certification regarding the withheld material shows that he relied on legal counsel’s advice

that the documents were covered by ACP and/or the ACD exemption. The petitioner has not claimed that Byrne knowingly withheld documents that should have been disclosed under OPRA. The record has no evidence of the state of intent of Byrne that could justify a finding of willfulness.

In Bart v. City of Paterson Hous. Auth., the court found the custodian did not act knowingly and willfully where the custodian consulted with counsel to formulate a proper response. See supra, 403 N.J. Super at 619. Similarly, Byrne has relied on advice of counsel to withhold documents. Moreover, this court's in camera review of those documents show that most of the documents were subject to privilege or exemption and in several instances the question of privilege or exemption was a close legal question. If the Legislature intended to impose civil monetary penalties upon such officials that rely and act on the advice of legal counsel, the Legislature would not have included the "willful" standard. In the instant matter, the record does not support a finding of willfulness that goes to the state of mind of the individual custodian. Thus, civil penalties for the violation of OPRA cannot be imposed. Accordingly, I **FIND** and **CONCLUDE** Byrne did not knowingly and willfully violate OPRA.

CONCLUSIONS

I **CONCLUDE** that the following Items do not fall under the attorney-client privilege or the ACD exemption, Item Nos.: 42, 69/935/1215, 83/934, 1145, 1225, 1255, 1258, 1259, 3039 3199, 3219, 3220, and 3221.

I **CONCLUDE** that the Petitioner's application for attorney's fees was reasonable.

I **CONCLUDE** that by the totality of the circumstances Robert Byrne did not knowingly and willfully violate OPRA.

ORDER

Based on the briefs, exhibits and certifications submitted, I hereby **ORDER** as follows:

1. Respondent shall produce documents Item Nos.: 42, 69/935/1215, 83/ 934, 1145, 1225, 1255, 1258, 1259, 2310, 2626, 2974, 3199, 3039, 3219, 3220, 3221.
2. Petitioner is entitled to an award of attorney's fees in the amount of \$34,242.00.

I hereby **FILE** my initial decision with the **GOVERNMENT RECORDS COUNCIL** for consideration.

This recommended decision may be adopted, modified or rejected by the **GOVERNMENT RECORDS COUNCIL**, who by law is authorized to make a final decision in this matter. If the Government Records Council does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE GOVERNMENT RECORDS COUNCIL, 101 South Broad Street, PO Box 819, Trenton, New Jersey 08625-0819**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 20, 2017



DATE

JOANN LASALA CANDIDO, ALAJ

Date Received at Agency:

December 20, 2017

Date Mailed to Parties:

ljb



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

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

December 18, 2012 Government Records Council Meeting

Steve Hyman
Complainant

Complaint No. 2007-118

v.

City of Jersey City (Hudson)
Custodian of Record

At the December 18, 2012 public meeting, the Government Records Council (“Council”) considered the November 20, 2012 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian failed to fully comply with the Council’s September 25, 2012 Interim Order because he failed to submit certified confirmation of compliance to the Executive Director within the extended time frame to comply.
2. The Complainant’s Counsel has failed to establish in her request for reconsideration of the Council’s September 25, 2012 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 has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in referring this complaint to the Office of Administrative Law for an *in camera* review *de novo*. Notably, Counsel failed substantiate that the Court’s remand specifically required the GRC to order additional information from the Custodian. Thus, Counsel’s request for reconsideration should be denied. D’Atria v. D’Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990); Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996); 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). This complaint should be referred to the OAL for in accordance with the conclusion Nos. 3 and 4 of the Council’s September 25, 2012 Interim Order.



Interim Order Rendered by the
Government Records Council
On The 18th Day of December, 2012

Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: December 19, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
December 18, 2012 Council Meeting**

**Steven Hyman¹
Complainant**

GRC Complaint No. 2007-118

v.

**City of Jersey City (Hudson)²
Custodian of Records**

Records Relevant to Complaint:

1. All records identified in attached privilege log and privilege log No. 2.³
2. The McGuire Associates appraisal report for Block 247, Lot 50A.
3. The McGuire Associates appraisal report for Block 212, Lot M.
4. Council resolution(s) authorizing John Curley's legal services in the amount of \$56,901.78.
5. All resolutions, contracts and invoices for legal services performed by John Curley from June, 2006 to the date of the request.⁴
6. Invoices for Charles Montange's legal services based on two resolutions authorizing a total of \$40,000 in payments for services rendered by Charles Montange.
7. Council resolution authorizing McGuire Associates real estate appraisal services not to exceed \$25,000.
8. Council resolution authorizing Value Research Group real estate appraisal services.
9. Council resolution authorizing Verne V. Watley professional services.
10. Council resolution authorizing Burns & Fiorina, Inc., demolition services.
11. All resolutions, contracts and invoices pertaining to the railroad title search.⁵
12. All resolutions, contracts and invoices pertaining to the services performed by [Dresdner] Robin Environmental Management, Inc.
13. All resolutions, contracts and invoices pertaining to the services performed by MATRIX Environmental & Geological Services, Inc.
14. All resolutions, contracts and invoices pertaining to the services performed by EnviroTech Research, Inc.

¹ Represented by Michele R. Donato, Esq. (Lavallette, NJ).

² Represented by Raymond Reddington, Esq. (Jersey City, NJ).

³ The two (2) privilege logs are documents created by Custodian's Counsel in response to the underlying OPRA request and were provided to Complainant along with some of the records responsive. These logs provide a list of exempt records and the legal reason for the record's nondisclosure pursuant to OPRA.

⁴ The Complainant notes that he was provided with records responsive to this request item for May, 2006 which are not at issue in this complaint.

⁵ The Complainant states that he was provided with various proposals for title search services but that no records were included as to which vendors were selected or what price they may have charged.

15. All resolutions, contracts and invoices pertaining to the services performed by GEOD Corporation.
16. All additional resolutions, contracts, invoices, proposals and other financial records pertaining to the Sixth Street Embankment that Jersey City has yet to provide.⁶

Request Made: October 25, 2006⁷

Response Made: October 26, 2006

Custodian: Robert Byrne

GRC Complaint Filed: May 15, 2007⁸

Background

September 25, 2012

Government Records Council's ("Council") Interim Order. At its September 25, 2012 public meeting, the Council considered the September 18, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian shall either disclose all records responsive to the Complainant's OPRA request Item Nos. 2 through 15 or certify as follows: that all records responsive to each OPRA request item were previously provided or that no records responsive to a particular OPRA request item exist. If the Custodian has previously provided access to all responsive records, the Custodian shall so indicate the date or dates on which said records for each OPRA request item were provided.
2. **The Custodian shall comply with Item No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁹ to the Executive Director.¹⁰**

⁶ The Complainant contends that based on the number of records not provided, other records relating to the request must exist.

⁷ A majority of the records requested in the OPRA request were provided to the Complainant by the Custodian. The records relevant to this complaint are cited specifically by the Complainant as those records to which access has been denied by the Custodian.

⁸ The GRC received the Denial of Access Complaint on said date.

⁹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹⁰ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

3. Whereas the Council has already completed an *in camera* review and the Appellate Division has reversed the Council's holding in same, the GRC thus determines that this matter is one of contested facts. Therefore, upon the completion of compliance with the Council's Interim Order, this complaint should be referred to the Office of Administrative Law for an *in camera* review *de novo* and a determination of whether the Custodian unlawfully denied access to the records contained within the relevant privilege log. Additionally, if necessary, the Office of Administrative Law should make determination whether the Custodian knowingly and willfully violated OPRA.

4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council's May 27, 2010 Interim Order, 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. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian complied with the Council's May 27, 2010 Interim Order requiring disclosure of three (3) records. Further, the relief ultimately achieved had a basis in law. 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, Teeters, supra, and Mason, supra. Thus, upon completion of compliance with the Council's Interim Order, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. Based on the New Jersey Supreme Court's decision in New Jerseyans for a Death Penalty Moratorium v. NJ Department of Corrections, 185 N.J. 137, 156-158 (2005) and the Council's decisions in Wolosky v. Township of Sparta (Sussex), GRC Complaint Nos. 2008-219 and 2008-277, (November 2011), an enhancement of the lodestar fee is not appropriate in this matter because the facts of this case do not rise to a level of "unusual circumstances ...justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

September 26, 2012

Council's Interim Order ("Order") distributed to the parties.

September 28, 2012

Letter from the Custodian's Counsel to the GRC. Counsel requests an extension of five (5) business days to comply with the Council's Order. Counsel states that the Custodian has previously provided 4,050 pages of records to the Complainant and that he must now review these records to determine whether they applied to all of the Complainant's OPRA request items at issue herein. Counsel further asserts that it is possible that some records are in storage and would have to be retrieved if they were not already provided to the Complainant. Additionally, Counsel states that some records may be in possession of the City of Jersey City's ("City") outside counsel, who is currently reviewing his own files.

October 1, 2012

E-mail from the GRC to the Custodian's Counsel. The GRC grants Counsel an extension of time until October 10, 2012 to comply with the Council's Order.

October 11, 2012

Custodian's response to the Council's Order attaching the following:

- Ms. Monique Snow's ("Ms. Snow"), City Law Department Administrative Secretary, legal certification.
- Records responsive to the Complainant's OPRA request Item Nos. 2 through 15.

The Custodian certifies that he is the Custodian of record for the City. The Custodian certifies that regarding the Council's Order, his responses are as follows:

OPRA request Item Nos. 2 and 3: McGuire Associates appraisal reports

The Custodian certifies that in June and July 2007, he met with Mr. Robert Whyte ("Mr. Whyte"), a representative of the Complainant, in order to provide the Complainant with the records attached herein. The Custodian certifies that he provided these records to Mr. Whyte at that time.

OPRA request Item No. 4: Council resolutions authorizing \$56,901.78 contract with Mr. John Curley ("Mr. Curley")

The Custodian certifies that he provided two (2) resolutions to the Complainant prior to the filing of this complaint: Resolution 04-349 dated June 2, 2004 and Resolution No. 05-1024 dated December 14, 2005. Document Nos. 3258 and 3259. The Custodian certifies that neither of these resolutions specifically concerned the contract with Mr. Curley in the amount of \$56,901.78. The Custodian certifies that he also provided these records to Mr. Whyte in June or July 2007, which are attached. The Custodian certifies that his review of resolutions from January 1, 2004 to October 25, 2006 revealed that no service contract with Mr. Curley in the amount of \$56,901.78 ever existed.

Additionally, Ms. Snow certifies that she checked the Law Department's finance records from January 2002 through October 26, 2006 and located the same two (2) resolutions. Ms. Snow certifies that the first resolution contracted Mr. Curley's services for \$20,000.00 and the second resolution amended the terms of the contract but did not increase the contract amount. Ms. Snow certifies that Resolution No. 07-659 dated August 22, 2007 authorized an amount increase of \$110,000.00. Ms. Snow certifies that no resolution authorizing a contract in the amount of \$56,901.78 exists.

OPRA request Item No. 5: Resolutions, contracts and invoices for Mr. Curley

The Custodian states that Ms. Snow's certification addresses this request item.

Ms. Snow certifies that all invoices for legal services provided by Mr. Curley for the time period June 2006 through October 25, 2006 and the contract with Mr. Curley

are attached. Ms. Snow certifies that the City adopted no resolutions pertaining to Mr. Curley during that time frame.

OPRA request Item No. 6: Invoices for Mr. Charles Montange (“Mr. Montange”)

The Custodian certifies that the City maintained no responsive invoices for Mr. Montange; however, a vendor history report was provided to Mr. White in June or July 2007.

Ms. Snow certifies that all invoices for legal services provided by Mr. Montange for the time period from his hiring date of September 28, 2005 through October 25, 2006 are attached.

OPRA request Item No. 7: Resolutions authorizing McGuire Associates services not exceeding \$25,000

The Custodian certifies that Resolution No. 03-546 dated July 16, 2003 authorizing a contract with McGuire Associates was provided to Mr. Whyte in either June or July 2007. The Custodian certifies that Resolution No. 04-209 dated April 14, 2004 was provided to the Complainant prior to the filing of this complaint and are attached. Document No. 855. The Custodian further certifies his review of resolutions from January 1, 2003 through October 26, 2006 revealed that no resolution with McGuire Associates in the amount of \$25,000.00 exists.

OPRA request Item No. 8: Resolutions authorizing Value Service Group services

The Custodian certifies that Resolution No. 04-331 dated June 2, 2004, Resolution No. 05-222 dated March 23, 2005 and Resolution 07-042 dated January 10, 2007 authorizing a contract with Value Research Group were provided to the Complainant and Mr. Whyte at some point between October 26, 2006 and July 2007 and are attached.

OPRA request Item No. 9: Resolution authorizing Mr. Verne V. Watley (“Mr. Watley”)

The Custodian certifies that an invoice for Mr. Watley in the amount of \$344.35 was provided to the Complainant prior to the filing of this complaint and is attached. Document Nos. 1069 and 1070. The Custodian certifies that a review of all resolutions from January 1, 2000 through October 25, 2006 revealed that there was no resolution awarding a contract in the amount of \$344.35 to Mr. Watley.

OPRA request Item No. 10: Resolution authorizing Burns & Fiorina, Inc. demolition services

The Custodian certifies that an invoice for Burns & Fiorina, Inc., billed to National Bulk Carriers, not the City, was provided to the Complainant prior to the filing of this complaint and is attached. Document Nos. 1292 to 1294. The Custodian certifies that the City never entered into a contract with Burns & Fiorina, Inc.

OPRA request Item No. 11: Resolutions, contracts and invoices pertaining to title searches

The Custodian certifies that a purchase requisition and other documentation pertaining to a contract with Hudson Realty Abstract Company was provided to the Complainant prior to the filing of this complaint and are attached. Document Nos. 3136 through 3156.

The Custodian further certifies that the City's Purchasing Agent advised that the purchase requisition/contract for R-114848 in the amount of \$4,300.00 was cancelled in June or July 2006 and no payment was made to the vendor.

OPRA request Item No. 12: Resolutions, contract and invoices pertaining to Dresdner Robin Environmental Management, Inc. ("Dresdner") services

The Custodian certifies that Resolution No. 05-581 dated July 13, 2005 and an unsigned contract with Dresdner were provided to the Complainant or Mr. Whyte at some point between October 26, 2006 and July 2007. The Custodian certifies that a vendor report was provided to Mr. Whyte in July 2007. The Custodian certifies that all three (3) records are attached.

OPRA request Item No. 13: Resolutions, contracts and invoices pertaining to MATRIX Environmental & Geological Services, Inc. ("MATRIX") services

The Custodian certifies that the Complainant was provided with a report prior to the filing of this complaint. Document Nos. 2049 through 2099. The Custodian certifies that the report was prepared by Dresdner in 1997 for the Jersey City Redevelopment Authority. The Custodian certifies that MATRIX was a contractor for Dresdner and named in the report. The Custodian certifies that a review of resolutions from January 1, 1997 through October 25, 2006 revealed that no resolutions authorizing a contract with Matrix exists.

OPRA request Item No. 14: Resolutions, contracts and invoices pertaining to Envirotech Research, Inc. ("Envirotech") services

The Custodian certifies that Envirotech was also a contractor for Dresdner named in the 1997 report. The Custodian certifies that a review of resolutions from January 1, 1997 through October 25, 2006 revealed that no resolutions authorizing a contract with Envirotech exists.

OPRA request Item No. 15: Resolutions, contracts and invoices pertaining to GEOD Corp. ("GEOD") services

The Custodian certifies that a review of resolutions from January 1, 1997 through October 25, 2006 revealed that no resolutions authorizing a contract with GEOD exists.

October 11, 2012

Complainant Counsel's request for reconsideration. Counsel requests that the Council reconsider its Order based on a mistake.

Counsel states that the Appellate Division's August 27, 2012 decision remanded this matter to the GRC with specific instructions to require the City to produce records responsive to the Complainant's OPRA request Item Nos. 2 through 15. Counsel states that the Court further ordered the City to provide more detailed privilege logs identifying the litigation justifying their asserted attorney-client privilege exemption and arguments supporting the deliberative process exemption. Counsel contends that the Council's Order did not meet the Court's decision.

Counsel states that the Court recognized that the Complainant could not evaluate the legitimacy of the privilege claims until this information is provided. The Council also recognized this in its Order. Counsel contends that there are no contested facts since the City has not submitted the required privilege logs.

Counsel states that conclusion No. 3 of the Council's Order states that:

“[w]hereas the Council has already completed an *in camera* review and the Appellate Division has reversed the Council's holding in same, the GRC thus determines that this matter is one of contested facts. Therefore, upon the completion of compliance with the Council's Interim Order, this complaint should be referred to the Office of Administrative Law for an *in camera* review *de novo* and a determination of whether the Custodian unlawfully denied access to the records contained within the relevant privilege log. Additionally, if necessary, the Office of Administrative Law should make determination whether the Custodian knowingly and willfully violated OPRA.” *Id.*

Counsel contends that the Council erroneously concluded that there are contested issues of fact between the Court's findings and the Council's *in camera* findings. Counsel states that pursuant to the Administrative Procedures Act (“APA”), contested facts are those between an interested party and the agency, not between the agency and the Court. Counsel contends that the City has not provided the detailed logs supporting its exemptions; therefore, there can be no issue of contested fact at this time. Counsel contends that the Council's Order referring this matter to the Office of Administrative Law (“OAL”) is thus inconsistent with the Court's decision.

Counsel asserts that the Council's conclusion No. 3 is inapposite to its own citations and the Court's decision. Counsel states that the Council correctly quotes from existing case law the obligation of an administrative agency to act strictly in accordance with an order of remand from the Courts. Counsel states that it is fundamental that the terms and scope of a remand bind the agency and that the agency must act in accordance with remand instructions even if the agency disagrees with the decision. See Special Care of New Jersey, Inc. v. Board of Review, 327 N.J. Super. 197, 204 (App. Div.), *cert. denied*, 164 N.J. 190 (2000). Counsel states that the Court herein provided specific

instructions to the GRC and the City. Counsel contends that the Council's holding was inconsistent with the Court's instructions.

Counsel asserts that it is essential that the GRC act in accordance with the Court's decision. Counsel contends that the City now has an obligation to provide the records responsive to the relevant request items and further provide detailed privilege logs to the GRC. Counsel asserts that there are no options for the GRC to dispute the decision or modify same on remand.

Counsel contends that this matter is of particular urgency based on another proceeding in which the City is not being forthcoming with public records relating to the ongoing controversy with the Embankment properties. *See 212 Marin Boulevard, LLC v. City of Jersey City et al*, Docket No. HUD-L-6131-11. Counsel contends that the City raised arguments in that complaint that the Court rejected and that the Law Division also ruled against the City and ordered attorney's fees.

Counsel disputes the City's request for an extension of time until October 10, 2012 to comply with the Council's Order. Counsel contends that the extension was inconsistent with the specific terms of the Council's Order. Counsel further argues that the Custodian did not respond until October 11, 2012, one (1) day after the expiration of the extended time frame to comply.

Counsel contends that because the Custodian has failed to comply with OPRA in issuing the detailed privilege logs, the Complainant is entitled to attorney's fees and the proper privilege logs. Counsel contends that the continued delay of this matter is entirely unwarranted and violates the Court's decision. Counsel requests that the GRC act immediately to comply with the Court's remand and award attorney's fees accordingly for the City's failure to disclose the records inappropriately classified as exempt from access.

Counsel notes that she is prepared to file an appeal if the GRC insists on referring this complaint to the OAL. Counsel further notes that she will seek attorney's fees in accordance with New Jersey Court Rules.

Analysis

Whether the Custodian complied with the Council's September 25, 2012 Interim Order?

At its September 25, 2012 meeting, the Council ordered the Custodian to:

"...either disclose all records responsive to the Complainant's OPRA request Item Nos. 2 through 15 or certify as follows: that all records responsive to each OPRA request item were previously provided or that no records responsive to a particular OPRA request item exist. If the Custodian has previously provided access to all responsive records, the Custodian shall so indicate the date or dates on which said records for each OPRA request item were provided.

The Council further ordered that:

“The Custodian shall comply ... within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.” (Footnotes omitted.)

The Council disseminated its Order to the parties on September 26, 2012. Thus, the Custodian’s response was due by close of business on October 3, 2012. On October 28, 2012, the Custodian’s Counsel sought an extension of five (5) business days, or until October 10, 2012, to submit the Custodian’s certified confirmation of compliance. The GRC responded on October 1, 2012 granting same.

On October 11, 2012, or one (1) day after the expiration of the deadline to comply, the Custodian submitted certified confirmation of compliance attaching multiple records. In said certification, the Custodian certified that either records responsive to each request were provided to the Complainant or that a specific responsive record did not exist. Thus, although the Custodian’s certified confirmation of compliance satisfied the requirements set forth in conclusion No. 1 of the Council’s Order, the Custodian failed to submit his certified confirmation of compliance within the extended time frame.

Therefore, the Custodian failed to fully comply with the Council’s September 25, 2012 Interim Order because he failed to submit certified confirmation of compliance to the Executive Director within the extended time frame to comply.

Whether the Complainant’s Counsel has met the required standard for reconsideration of the Council’s September 25, 2012 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)*.

In the matter before the Council, the Complainant’s Counsel filed the request for reconsideration of the Council’s Order dated September 25, 2012 on October 11, 2012, ten (10) business days from the issuance of the Council’s Order.

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 the request for reconsideration, the Complainant's Counsel argued that the Council Order to send the instant complaint to the OAL based on contested facts was erroneous. Specifically, Counsel alleged that the Council concluded that there was an issue of contested facts between the Court's decision and the Council's *in camera* review instead of adhering to the decision by ordering the City to provide a more detailed document index. Counsel further argued that there can be no issue of contested facts because the City has not yet provided the required privilege logs.

Counsel further asserted that the Council's Order also went against its own citations. Counsel argued that there is no option for the Council to dispute or modify the Court's decision and that it is fundamental that an agency comply with the terms of a remand even if it disagrees with same.

The GRC rejects Counsel's request for reconsideration. A plain reading of the Court's holding in Hyman yields two (2) conclusions.

First, the Court notes contested facts regarding the disclosability of the records listed in the privilege log. For example, the Court calls into question the existence of a cooperative relationship between the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("Coalition") and the City as co-litigants that would exempt records from access under the attorney-client privilege. Specifically, a member of the Coalition was copied on several records that the City deemed to be exempt under the attorney-client privilege. Although the Court noted the City's argument that the Coalition and City were co-litigants against the Complainant and were both represented by the same attorney, the Court held that there was "... no indication that the Coalition and the City or the City and any other party have been co-litigants in other proceedings or disputes involving the properties over the years." *Id.* at pg. 13.

The Court went on to hold that:

"... the blanket designation of certain documents as subject to attorney-client privilege solely because they relate to the Embankment is erroneous. Evidence of the inadequacy of this global characterization provided by the

custodian and upheld by the GRC is reflected in the GRC's own actions following its in-camera review.” *Id.* at pg. 15.

Second, the Court never explicitly holds that the GRC must order the Custodian to produce a more detailed document index in order to determine whether some of the records actually constituted advisory, consultative or deliberative (“ACD”) or attorney-client privileged material. The Court notes that the “... City bears the burden of establishing the deliberative nature of the withheld documents in a manner that affords [the Complainant] a meaningful opportunity to refute this claim.” *Id.* at pg. 18. The Court further held that “[i]f the custodian's response to the complaint does not justify the denial of access based upon the claimed privilege or exception, the GRC has a number of options available to it ...” *Id.* at pg. 19. Two of the options discussed were the GRC’s ability to have a hearing in accordance with the APA and the Executive Director’s ability to request additional information. However, the Court’s remand does not specifically instruct the GRC to pick one of the cited options; thus, the GRC has chosen its course of action based on the complexity of the issues expressed by the Court in its decision.

To be clear, the Council does not see the Court’s holding as the reason for contested facts: the Court itself points out examples of contested facts and provides the Council with options for developing the record. Thus, the Council has chosen one of the options afforded to it. *See* Council’s Order dated September 25, 2012 at pg. 7-8. Moreover, the referring of this complaint to the OAL allows for the administrative ease of coalescing the issues of disclosability, unlawful denial of access, any possible knowing and willful violation and a determination of prevailing party attorney’s fees into one holding.

Counsel has also failed to show that the GRC acted arbitrarily, capriciously or unreasonably *See D’Atria, supra.*

Therefore, Counsel has failed to establish in her request for reconsideration of the Council’s September 25, 2012 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 has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in referring this complaint to the OAL for an *in camera* review *de novo*. Notably, Counsel failed substantiate that the Court’s remand specifically required the GRC to order additional information from the Custodian. Thus, Counsel’s request for reconsideration should be denied. Cummings, supra; D’Atria, supra; Comcast, supra. This complaint should be referred to the OAL for in accordance with the conclusion Nos. 3 and 4 of the Council’s September 25, 2012 Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to fully comply with the Council’s September 25, 2012 Interim Order because he failed to submit certified confirmation of

compliance to the Executive Director within the extended time frame to comply.

2. The Complainant's Counsel has failed to establish in her request for reconsideration of the Council's September 25, 2012 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 has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in referring this complaint to the Office of Administrative Law for an *in camera* review *de novo*. Notably, Counsel failed substantiate that the Court's remand specifically required the GRC to order additional information from the Custodian. Thus, Counsel's request for reconsideration should be denied. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990); Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996); 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). This complaint should be referred to the OAL for in accordance with the conclusion Nos. 3 and 4 of the Council's September 25, 2012 Interim Order.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

November 20, 2012¹¹

¹¹ This complaint was prepared and scheduled for adjudication at the Council's November 27, 2012 meeting; however, said meeting was cancelled due to lack of quorum.
Steven Hyman v. City of Jersey City (Hudson), 2007-118 – Supplemental Findings and Recommendations of the Executive Director



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

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

September 25, 2012 Government Records Council Meeting

Steven Hyman
Complainant

Complaint No. 2007-118

v.

City of Jersey City (Hudson)
Custodian of Record

At the September 25, 2012 public meeting, the Government Records Council ("Council") considered the September 18, 2012 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian shall either disclose all records responsive to the Complainant's OPRA request Item Nos. 2 through 15 or certify as follows: that all records responsive to each OPRA request item were previously provided or that no records responsive to a particular OPRA request item exist. If the Custodian has previously provided access to all responsive records, the Custodian shall so indicate the date or dates on which said records for each OPRA request item were provided.
2. **The Custodian shall comply with Item No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**
3. Whereas the Council has already completed an *in camera* review and the Appellate Division has reversed the Council's holding in same, the GRC thus determines that this matter is one of contested facts. Therefore, upon the completion of compliance with the Council's Interim Order, this complaint should be referred to the Office of Administrative Law for an *in camera* review *de novo* and a determination of whether the Custodian unlawfully denied access to the records contained within the relevant

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² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

privilege log. Additionally, if necessary, the Office of Administrative Law should make determination whether the Custodian knowingly and willfully violated OPRA.

4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council's May 27, 2010 Interim Order, 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. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian complied with the Council's May 27, 2010 Interim Order requiring disclosure of three (3) records. Further, the relief ultimately achieved had a basis in law. 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, Teeters, *supra*, and Mason, *supra*. Thus, upon completion of compliance with the Council's Interim Order, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. Based on the New Jersey Supreme Court's decision in New Jerseyans for a Death Penalty Moratorium v. NJ Department of Corrections, 185 N.J. 137, 156-158 (2005) and the Council's decisions in Wolosky v. Township of Sparta (Sussex), GRC Complaint Nos. 2008-219 and 2008-277, (November 2011), an enhancement of the lodestar fee is not appropriate in this matter because the facts of this case do not rise to a level of "unusual circumstances ...justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

Interim Order Rendered by the
Government Records Council
On The 25th Day of September, 2012

Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: September 26, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 25, 2012 Council Meeting**

**Steven Hyman¹
Complainant**

GRC Complaint No. 2007-118

v.

**City of Jersey City (Hudson)²
Custodian of Records**

Records Relevant to Complaint:

1. All records identified in attached privilege log and privilege log No. 2.³
2. The McGuire Associates appraisal report for Block 247, Lot 50A.
3. The McGuire Associates appraisal report for Block 212, Lot M.
4. Council resolution(s) authorizing John Curley's legal services in the amount of \$56,901.78.
5. All resolutions, contracts and invoices for legal services performed by John Curley from June, 2006 to the date of the request.⁴
6. Invoices for Charles Montange's legal services based on two resolutions authorizing a total of \$40,000 in payments for services rendered by Charles Montange.
7. Council resolution authorizing McGuire Associates real estate appraisal services not to exceed \$25,000.
8. Council resolution authorizing Value Research Group real estate appraisal services.
9. Council resolution authorizing Verne V. Watley professional services.
10. Council resolution authorizing Burns & Fiorina, Inc., demolition services.
11. All resolutions, contracts and invoices pertaining to the railroad title search.⁵
12. All resolutions, contracts and invoices pertaining to the services performed by Dresden Robin Environmental Management, Inc.
13. All resolutions, contracts and invoices pertaining to the services performed by MATRIX Environmental & Geological Services, Inc.
14. All resolutions, contracts and invoices pertaining to the services performed by EnviroTech Research, Inc.

¹ Represented by Michele R. Donato, Esq. (Lavallette, NJ).

² Represented by Raymond Reddington, Esq. (Jersey City, NJ).

³ The two (2) privilege logs are documents created by Custodian's Counsel in response to the underlying OPRA request and were provided to Complainant along with some of the records responsive. These logs provide a list of exempt records and the legal reason for the record's nondisclosure pursuant to OPRA.

⁴ The Complainant notes that he was provided with records responsive to this request item for May 2006 which are not at issue in this complaint.

⁵ The Complainant states that he was provided with various proposals for title search services but that no records were included as to which vendors were selected or what price they may have charged.

15. All resolutions, contracts and invoices pertaining to the services performed by GEOD Corporation.
16. All additional resolutions, contracts, invoices, proposals and other financial records pertaining to the Sixth Street Embankment that Jersey City has yet to provide.⁶

Request Made: October 25, 2006⁷

Response Made: October 26, 2006

Custodian: Robert Byrne

GRC Complaint Filed: May 15, 2007⁸

Background

August 24, 2010

Government Records Council's ("Council") Interim Order. At its August 24, 2010 public meeting, the Council considered the August 17, 2010 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 Custodian provided the records ordered to be disclosed to the Complainant on June 8, 2010, and because the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within five (5) business days of receiving the Council's Interim Order, the Custodian has complied with the Council's May 27, 2010 Interim Order.
2. Because the Complainant's request at Item Nos. 2, 3, 4, 6, 7, 8, 9 and 10 seeks appraisal reports, resolutions and invoices pertaining to particular subject matter or authorizing the services of particular entities and fails to specify with reasonable clarity identifiable government records, these requests would require the Custodian to research all appraisal reports, resolutions and invoices in his possession to locate and identify those records which may be responsive to the request; they are overly broad and are therefore invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007). *See also* Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

⁶ The Complainant contends that based on the number of records not provided, other records relating to the request must exist.

⁷ A majority of the records requested in the OPRA request were provided to the Complainant by the Custodian. The records relevant to this complaint are cited specifically by the Complainant as those records to which access has been denied by the Custodian.

⁸ The GRC received the Denial of Access Complaint on said date.

3. Because the Complainant has failed to establish in his motion for reconsideration of the Council's May 27, 2010 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 has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing of the complaint, said motion 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).
4. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007), the Custodian's failure to immediately grant or deny access to the requested bills and vouchers, request additional time to respond or request clarification of the request results in a violation of N.J.S.A. 47:1A-5.e. and the Custodian failed to bear his burden of proving a lawful denial of access to record No. 2604, No. 2845 and No. 3078 pursuant to N.J.S.A. 47:1A-6. However, because the Custodian complied with the Council's March 25, 2009 and May 27, 2010 Interim Orders and because the Complainant's request Items No. 2 through No. 16 are invalid under OPRA, 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.

August 30, 2010

Council's Final Decision distributed to the parties.

July 13, 2011

Complainant's Notice of Appeal. The Complainant appeals this complaint to the Superior Court of New Jersey, Appellate Division.

August 27, 2012

The Superior Court of New Jersey, Appellate Division, affirms the Council's Final Decision in part, reverses in part and remands the matter to the GRC for further proceedings related to the Custodian's assertion of attorney-client privilege and inter-agency, intra-agency advisory consultative or deliberative ("ACD") exemption consistent with its opinion.⁹

⁹ The Appellate Division notes that it does not retain jurisdiction.

August 30, 2012

Letter from the Complainant's Counsel to the GRC. Counsel states that as a result of the Appellate Division's decision, the City of Jersey City ("City") is now required to produce records responsive to the Complainant's OPRA request Item Nos. 2 through 15 that the City previously denied based on the argument that the request items were overly broad. Counsel states that these records should be provided immediately.

Counsel further states that the Complainant is entitled to prevailing party attorney's fees since it is clear from the Appellate Division's decision that the failure to produce records resulted in a violation of OPRA.

Counsel finally requests that the GRC advise her of when the City will be required to revise the privilege log in accordance with the Appellate Division's decision.

September 20, 2012

E-mail from the GRC to all parties. The GRC notifies the parties that the instant complaint is tentatively scheduled for adjudication at the Council's September 25, 2012 Council meeting

September 20, 2012

E-mail from the Custodian's Counsel to the GRC. Counsel states that subsequent to the Appellate Division's decision, the Complainant's Counsel submitted letters to the GRC on August 30, 2012 and September 19, 2012.¹⁰ Counsel states that he intends to submit a response to said letters and requests an extension of time until September 24, 2012 to submit same.

September 21, 2012

E-mail from the GRC to the Custodian's Counsel. The GRC states that due to the imminent adjudication of this matter at the Council's September 25, 2012 meeting, the GRC must receive Counsel's submissions by no later than close of business on this day. The GRC states that will not accept any submissions after the expiration of this deadline.

September 21, 2012

Letter from the Complainant's Counsel to the GRC. Counsel states that she is in receipt of the GRC's notification and the Custodian Counsel's subsequent request to submit additional correspondence.

Counsel states that the terms and scope of a remand are binding on GRC and that the GRC must adhere to said remand even if it disagrees with same. Special Care of NJ v. Board of Review, 327 N.J. Super. 197, 204 (App. Div. 2000), *certif. denied* 164 N.J. 190 (2000). Counsel states that the Appellate Division's decision did not allow for the parties to reargue this case but instead provided specific direction to the City and GRC. Counsel asserts that the case is fully decided and the GRC must act in a manner consistent with the Appellate Division's holding: the City must release records responsive to OPRA request Item Nos. 2 through 15 and provide a more detailed privilege log to the GRC.

¹⁰ As of the Council's meeting held on September 25, 2012, the GRC was not in receipt of a letter from the Complainant's Counsel dated September 19, 2012.

Counsel asserts that the City's continued efforts to delay the adjudication of this complaint are unwarranted and further violate the Appellate Division's decision. Counsel thus requests that the GRC order the City to comply with said decision and that this complaint be adjudicated by the Council as scheduled on September 25, 2012. Counsel notes that the Complainant is prepared to file another appeal if this does not occur.¹¹

September 21, 2012

E-mail from the Custodian's Counsel to the GRC. Counsel states that on September 20, 2012, the GRC notified all parties that the instant complaint would be adjudicated at the Council's September 25, 2012. Counsel states that he submits this e-mail as a reply to the Complainant Counsel's submissions.

Counsel states that the Appellate Division reversed the Council's holding the Complainant's OPRA request Item Nos. 2 through 15, were overly broad. Counsel states that a review of the record shows that the City never asserted that any of the Complainant's OPRA request items were overly broad. Counsel states that the City has provided the Complainant with approximately 3,753 pages of records. Counsel states that the only records not provided were the 293 pages of records contained in the privilege log.

Counsel states that the Appellate Division held that the City failed to submit a properly detailed document index to the GRC as part of its *in camera* review. Counsel states that the Appellate Division further held that the City had to provide additional information as to why certain records were ACD in nature. Counsel thus requests that the City be given the opportunity to submit a new privilege log addressing these issues.

Analysis

Whether the Custodian unlawfully denied access to the requested report?

OPRA provides that:

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

Additionally, OPRA defines a government record as:

"... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ... *The terms shall not include inter-agency or intra-agency*

¹¹ The Complainant's Counsel noted that the City is also involved in other litigation regarding the Embankment project and has similarly not been forthcoming with records for the same reasons rejected by the Appellate Division.

advisory, consultative, or deliberative material.” (Emphasis added.)
N.J.S.A. 47:1A-1.1.

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

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

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

In its August 24, 2010 Interim Order, the Council determined that the Complainant’s request Item Nos. 2 through 16 were invalid request items. The Council further denied the Complainant’s request for reconsideration of the Council’s May 27, 2010 Interim Order, which upheld the Custodian’s denial of access to all but three (3) of the records the Council reviewed *in camera*. The Complainant subsequently filed an appeal of the Council’s decision with the Superior Court of New Jersey, Appellate Division.

The Appellate Division rendered a decision in Hyman v. City of Jersey City, Docket No. A-0789-10T4 (App. Div., August 27, 2012) on August 27, 2012 in which it affirmed in part, reversed in part and remanded to the GRC for further adjudication. Specially, the Court agreed that the Complainant’s request Item No. 16 was invalid as an overly broad request. However, the Court reversed the Council’s holding that the Complainant’s OPRA request Item Nos. 2 through 15 were invalid. The Court reasoned that “[t]he requests ... contained far more specificity than that which was presented to the custodian in [MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005)] ...” *Id.* at pg. 21. Thus, because the Appellate Division validated these requests, the GRC must address the disclosure of records thereto.

The evidence of record developed during the pendency of this complaint does not expressly indicate that the Custodian disclosed records responsive to the Complainant’s OPRA request Item Nos. 2 through 15. Specifically, the Custodian did certify in the Statement of Information (“SOI”) that the City of Jersey City (“City”) disclosed an estimated 7,000 pages of records; however, it is unclear how many of these records are responsive to the subject OPRA request items.

Therefore, the Custodian shall either disclose all records responsive to the Complainant’s OPRA request Item Nos. 2 through 15 or certify as follows: that all records responsive to each OPRA request item were previously provided or that no records responsive to a particular OPRA request item exist. If the Custodian has previously provided access to all responsive records, the Custodian shall so indicate the date or dates on which said records for each OPRA request item were provided.

Additionally, in Hyman, *supra*, the Complainant challenged the Council's holding that multiple records were exempt as attorney-client privileged and inter-agency and intra-agency advisory, consultative or deliberative ("ACD") material. Specifically, Complainant argued that the evidence of record failed to support the Council's *in camera* findings. Regarding the Complainant's argument, the Court stated that:

"... the GRC must require that the custodian do more than submit a conclusory recitation of the particular exception raised (*citing Paff v. NJ. Dep't of Labor*, 379 N.J. Super. 346, 353 (App. Div. 2005)). In other words, it is not enough for the custodian to merely state that the record is exempt because of an asserted privilege or exception. Rather, accompanying the privilege or exception category must be an explanation, which is sufficient, without revealing information itself privileged or protected, to 'enable other parties to assess the applicability of the privilege or protection.' *Id.* at 354 (quoting [New Jersey Court Rule] 4:10-2(e))" *Id.* at pg. 9-10.

The Court further noted that:

"[t]he description of the privileged documents provided by the GRC ... essentially mirrors the privilege log provided by the custodian and is limited to designating the privileged document as 'attorney-client privilege,' or '[ACD],' or both, with no further explanation as to why the privilege or exception applies." *Id.* at pg. 13.

The Court thus held that:

"... [the] generalized designation by the custodian failed to provide a description of the nature of the withheld documents 'in a manner that, without revealing information itself privileged or protected,' would enable [Appellant] 'to assess the applicability of the privilege.' R. 4:10-2(e). More importantly, it prevented meaningful adjudication by the GRC. *See Paff, supra*, [at 354] (noting 'OPRA contemplates the GRC's meaningful review of the basis for an agency's decision to withhold government records'). The generalized designations also stymie meaningful review by [the Court]." *Id.* at pg. 16.

The Court reasoned that when a custodian's response to a complaint fails to justify adequately the basis for a lawful denial of access, the GRC "... has a number of options available to it ..." *Id.* at pg. 19. Of those options, the GRC "... may conduct a hearing on the matter in conformity with the rules and regulations provided ... under the 'Administrative Procedure Act,' ... insofar as they may be applicable and practical." (*citing N.J.S.A. 47:1A-7.e.*) *Id.* Due to the GRC's scarce resources, it will routinely refer complaints to the Office of Administrative Law ("OAL") for issues of contested facts, possible knowing and willful violations and prevailing party attorney's fees.

Moreover, the Administrative Procedure Act provides that the OAL “shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the [OAL] ...” *N.J.A.C.* 1:1-3.2(a).

Whereas the Council has already completed an *in camera* review and the Appellate Division has reversed the Council’s holding in same, the GRC thus determines that this matter is one of contested facts. Therefore, upon the completion of compliance of the Council’s Interim Order, this complaint should be referred to the OAL for an *in camera* review *de novo* and a determination of whether the Custodian unlawfully denied access to the records contained within the relevant privilege log. Additionally, if necessary, the OAL should make a determination whether the Custodian knowingly and willfully violated OPRA and unlawfully denied access to the requested records under the totality of the circumstances.

Finally, the GRC notes that the Complainant, who is represented by Counsel, has not previously sought prevailing party attorney’s fees. See 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.). As such, the GRC has not previously addressed this issue. Thus, the Council rendered several decisions without including an analysis of whether the Complainant was a prevailing party entitled to reasonable attorney’s fees because neither the Complainant nor Counsel requested same. However, in Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the Supreme Court held that:

“*OPRA itself contains broader language on attorney’s fees than the former RTKL did.* OPRA provides that ‘[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney’s fee.’ N.J.S.A. 47:1A-6. Under the prior RTKL, ‘[a] plaintiff in whose favor such an order [requiring access to public records] issues ... may be awarded a reasonable attorney’s fee not to exceed \$500.00.’ N.J.S.A. 47:1A-4 (repealed 2002). *The Legislature’s revisions therefore: (1) mandate, rather than permit, an award of attorney’s fees to a prevailing party; and (2) eliminate the [\$500.00] cap on fees and permit a reasonable, and quite likely higher, fee award. [Footnote omitted.] Those changes expand counsel fee awards under OPRA.*” (Emphasis added.) *Id.* at 73-76.

Based on the Court’s specific language in Mason, *supra*, a complainant need not request that the Council determine whether he/she is a prevailing party entitled to reasonable attorney’s fees because N.J.S.A. 47:1A-6 is not permissive; rather, it is mandatory. The Council must, therefore, include a consideration of prevailing party attorney’s fees whenever the facts of a complaint so indicate. See Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-161 (Interim Order dated December 20, 2011).

The Complainant herein filed this complaint requesting that the City provide the financial records not included in records already provided and that the City redact the portions of the withheld records protected by attorney-client privilege or by the ACD

exemption and make the remainder of the records available with a general nature description of the information removed. Subsequent to an *in camera* review, the Council's May 27, 2010 Interim Order required the Custodian to disclosure of three (3) of the records reviewed *in camera*. The Custodian complied with said Order on June 8, 2010.

Therefore, pursuant to Teeters, *supra*, and the Council's May 27, 2010 Interim Order, 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. Additionally, pursuant to Mason, *supra*, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian complied with the Council's May 27, 2010 Interim Order requiring disclosure of three (3) records. Further, the relief ultimately achieved had a basis in law. 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, Teeters, *supra*, and Mason, *supra*. Thus, upon completion of compliance with the Council's Interim Order, this complaint should be referred to the OAL for the determination of reasonable prevailing party attorney's fees. Based on the New Jersey Supreme Court's decision in New Jerseyans for a Death Penalty Moratorium v. NJ Department of Corrections, 185 N.J. 137, 156-158 (2005) and the Council's decisions in Wolosky v. Township of Sparta (Sussex), GRC Complaint Nos. 2008-219 and 2008-277, (November 2011), an enhancement of the lodestar fee is not appropriate in this matter because the facts of this case do not rise to a level of "unusual circumstances ...justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian shall either disclose all records responsive to the Complainant's OPRA request Item Nos. 2 through 15 or certify as follows: that all records responsive to each OPRA request item were previously provided or that no records responsive to a particular OPRA request item exist. If the Custodian has previously provided access to all responsive records, the Custodian shall so indicate the date or dates on which said records for each OPRA request item were provided.
2. **The Custodian shall comply with Item No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified**

confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹² to the Executive Director.¹³

3. Whereas the Council has already completed an *in camera* review and the Appellate Division has reversed the Council's holding in same, the GRC thus determines that this matter is one of contested facts. Therefore, upon the completion of compliance with the Council's Interim Order, this complaint should be referred to the Office of Administrative Law for an *in camera* review *de novo* and a determination of whether the Custodian unlawfully denied access to the records contained within the relevant privilege log. Additionally, if necessary, the Office of Administrative Law should make determination whether the Custodian knowingly and willfully violated OPRA.

4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council's May 27, 2010 Interim Order, 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. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian complied with the Council's May 27, 2010 Interim Order requiring disclosure of three (3) records. Further, the relief ultimately achieved had a basis in law. 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, Teeters, *supra*, and Mason, *supra*. Thus, upon completion of compliance with the Council's Interim Order, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. Based on the New Jersey Supreme Court's decision in New Jerseyans for a Death Penalty Moratorium v. NJ Department of Corrections, 185 N.J. 137, 156-158 (2005) and the Council's decisions in Wolosky v. Township of Sparta (Sussex), GRC Complaint Nos. 2008-219 and 2008-277, (November 2011), an enhancement of the lodestar fee is not appropriate in this matter because the facts of this case do not rise to a level of "unusual circumstances ...justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

Prepared By: Frank F. Caruso
Senior Case Manager

¹² "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Approved By: Karyn Gordon, Esq.
Acting Executive Director

September 18, 2012



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

August 24, 2010 Government Records Council Meeting

Steve Hyman
Complainant

Complaint No. 2007-118

v.

City of Jersey City (Hudson)
Custodian of Record

At the August 24, 2010 public meeting, the Government Records Council (“Council”) considered the August 17, 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. Because the Custodian provided the records ordered to be disclosed to the Complainant on June 8, 2010, and because the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within five (5) business days of receiving the Council’s Interim Order, the Custodian has complied with the Council’s May 27, 2010 Interim Order.
2. Because the Complainant’s request at Item Nos. 2, 3, 4, 6, 7, 8, 9 and 10 seeks appraisal reports, resolutions and invoices pertaining to particular subject matter or authorizing the services of particular entities and fails to specify with reasonable clarity identifiable government records, these requests would require the Custodian to research all appraisal reports, resolutions and invoices in his possession to locate and identify those records which may be responsive to the request; they are overly broad and are therefore invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007). *See also* Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
3. Because the Complainant has failed to establish in his motion for reconsideration of the Council’s May 27, 2010 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 has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing of the complaint, said motion 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).

4. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007), the Custodian's failure to immediately grant or deny access to the requested bills and vouchers, request additional time to respond or request clarification of the request results in a violation of N.J.S.A. 47:1A-5.e. and the Custodian failed to bear his burden of proving a lawful denial of access to record No. 2604, No. 2845 and No. 3078 pursuant to N.J.S.A. 47:1A-6. However, because the Custodian complied with the Council's March 25, 2009 and May 27, 2010 Interim Orders and because the Complainant's request Items No. 2 through No. 16 are invalid under OPRA, 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.

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 24th Day of August, 2010

Robin Berg Tabakin, Chair
Government Records Council

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

Stacy Spera, Secretary
Government Records Council

Decision Distribution Date: August 30, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
August 24, 2010 Council Meeting**

**Steve Hyman¹
Complainant**

GRC Complaint No. 2007-118

v.

**City of Jersey City (Hudson)²
Custodian of Records**

Records Relevant to Complaint:

1. All records identified in attached privilege log and privilege log No. 2.³
2. The McGuire Associates appraisal report for Block 247, Lot 50A.
3. The McGuire Associates appraisal report for Block 212, Lot M.
4. Council resolution(s) authorizing John Curley's legal services in the amount of \$56, 901.78.
5. All resolutions, contracts and invoices for legal services performed by John Curley from June, 2006 to the date of the request.⁴
6. Invoices for Charles Montange's legal services based on two resolutions authorizing a total of \$40,000 in payments for services rendered by Charles Montange.
7. Council resolution authorizing McGuire Associates real estate appraisal services not to exceed \$25,000.
8. Council resolution authorizing Value Research Group real estate appraisal services.
9. Council resolution authorizing Verne V. Watley professional services.
10. Council resolution authorizing Burns & Fiorina, Inc., demolition services.
11. All resolutions, contracts and invoices pertaining to the railroad title search.⁵
12. All resolutions, contracts and invoices pertaining to the services performed by Dresden Robin Environmental Management, Inc.
13. All resolutions, contracts and invoices pertaining to the services performed by MATRIX Environmental & Geological Services, Inc.
14. All resolutions, contracts and invoices pertaining to the services performed by EnviroTech Research, Inc.

¹ Represented by Michele R. Donato, Esq. (Lavallette, NJ).

² Represented by Raymond Reddington, Esq. (Jersey City, NJ).

³ The two (2) privilege logs are documents created by Custodian's Counsel in response to the underlying OPRA request and were provided to Complainant along with some of the records responsive. These logs provide a list of exempt records and the legal reason for the record's nondisclosure pursuant to OPRA.

⁴ The Complainant notes that he was provided with records responsive to this request item for May, 2006 which are not at issue in this complaint.

⁵ The Complainant states that he was provided with various proposals for title search services but that no records were included as to which vendors were selected or what price they may have charged.

15. All resolutions, contracts and invoices pertaining to the services performed by GEOD Corporation.
16. All additional resolutions, contracts, invoices, proposals and other financial records pertaining to the Sixth Street Embankment that Jersey City has yet to provide.⁶

Request Made: October 25, 2006⁷

Response Made: October 26, 2006

Custodian: Robert Byrne

GRC Complaint Filed: May 15, 2007⁸

Background

May 27, 2010

Government Records Council's ("Council") Interim Order. At its May 27, 2010 public meeting, the Council considered the May 20, 2010 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian provided the GRC with the requested records and the Custodian's certification reiterating that all the records are exempt from disclosure as attorney client privileged or advisory, consultative or deliberative material in compliance with the Council's March 25, 2009 Interim Order on April 6, 2009, in a timely manner. Therefore, the Custodian complied with the Council's March 25, 2009 Interim Order.
2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**

Specifically, the Custodian shall disclose the following records to the Complainant:

**Record #2604 4-page ordinance Chapter 345-31 dated
11/22/2005;**

⁶ The Complainant contends that based on the number of records not provided, other records relating to the request must exist.

⁷ A majority of the records requested in the OPRA request were provided to the Complainant by the Custodian. The records relevant to this complaint are cited specifically by the Complainant as those records to which access has been denied by the Custodian.

⁸ The GRC received the Denial of Access Complaint on said date.

Record #2845 Resume of Andrew Strauss, Planning Consultant (do not disclose 4-page report accompanying resume);

Record #3078 Letter from Maureen Crowley to Jerramiah Healy dated 7/25/2005 Re: PR Harsimus Stem Embankment.

3. Because the Complainant's request at Item Nos. 5, 11, 12, 13, 14, 15, and 16 seeks "[a]ll resolutions, contracts and invoices" pertaining to various subjects and because these request items do not identify specific government records and because the Custodian would be required to conduct research throughout all of the files in his possession to locate and identify those records which may be responsive to the request, these requests are overly broad and are therefore invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007). *See also* Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

June 2, 2010

Council's Interim Order distributed to the parties.

June 8, 2010

Custodian's response to the Council's Interim Order. The Custodian certifies that he received the Council's May 27, 2010 Interim Order on June 2, 2010. The Custodian certifies that Record No. 2604, No. 2845 and No. 3078 were provided to the Complainant's Counsel via overnight mail on this date.

June 17, 2010

Complainant's motion for reconsideration. The Complainant requests reconsideration of the Council's June 2, 2010 Interim Order pursuant to *N.J.A.C. 5:105-2.10* based on extraordinary circumstances, mistake, fraud and illegality.

The Complainant's Counsel submits a legal brief in support of the Complainant's motion for reconsideration. Counsel states that, by way of background, the Complainant is an agent for limited liability companies that sought access to the requested records. Counsel states that a citizens group known as the Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition ("Coalition"), a nonprofit citizens group, lobbied the City of Jersey City ("City") to stop the proposed development of the Pennsylvania Railroad Harsimus Stem Embankment ("Embankment") and have such designated as a historic landmark. Counsel contends that the Coalition is not a government agency; rather, the Coalition is a separate and distinct party not associated with the City. Counsel alleges that Maureen Crowley ("Ms. Crowley") is the coordinator for the Coalition who worked with the City to use the historic landmark nomination to block private development of the Embankment. Counsel alleges that Ms. Crowley also urged the City

to retain Charles Montagne, Esq. (“Mr. Montagne”), an attorney not licensed to practice in the State of New Jersey.⁹

Counsel contends that based on the City’s assertions, the GRC was led to believe incorrectly that the Coalition is associated with the City and is thus protected by the attorney-client privilege and advisory, consultative or deliberative (“ACD”) exemptions to disclosure. Counsel argues that the GRC’s reliance on the City’s false assertions has led the GRC to uphold the exemption of numerous records from the public.

Additionally, Counsel avers that the City claims that it cannot locate important information regarding the financial aspects of its opposition to the development proposals for the Embankment. Counsel asserts that if the City cannot establish a legal relationship with Mr. Montagne, then the City cannot claim that he is their attorney. Further, Counsel asserts that the City has produced no information to support the exclusion of government records involving the Coalition. Counsel argues that the GRC has inaccurately assumed that the Coalition is a public agency by determining that communications between the City and Coalition are exempt under OPRA.

Moreover, Counsel contends that the GRC acted inconsistently in requiring disclosure of one (1) letter between Ms. Crowley and the Mayor while excluding numerous other records in which the Coalition was included. Counsel requests reconsideration based on the facts presented.

With regard to the issue of attorney-client privilege, Counsel states that the attorney-client privilege set forth at N.J.S.A. 2A:84A-20 provides for protection of communications between an attorney and client; however, several exceptions to the privilege exist (*i.e.*, communications obtained in aid of a crime or fraud). Counsel states that courts generally afford a narrow construction to claims of privilege in recognition of the fact that upholding a privilege can result in suppression of the truth. Kinsella v. Kinsella, 150 N.J. 276, 294 (1997). Counsel avers that the attorney-client privilege is not absolute and even in the absence of an explicit statutory exclusion, the information contained in otherwise privileged documents can be required to be disclosed. Counsel contends that In Re: Kozlov, 79 N.J. 232, 243-44 (1979) establishes that the privilege can be broken if three (3) elements are established:

“There must be a legitimate need of the party to reach the evidence sought to be shielded. There must be a showing of relevance and materiality ... [and] [i]t must also be shown ... that the information could not be secured from any less intrusive source.” *Id.* at ___.

Counsel state that a voluntary delivery of a privileged communication by the holder of the privilege to someone who is not a party to the privilege waives said exemption. *See United States v. Zolin*, 809 F.2d 1411 (9th Cir. 1987). Further, Counsel avers that the privilege is waived when confidential communications are made a material issue in

⁹ Counsel also provided an in depth history of the Embankment property and the City’s dealings with the Complainant regarding said property; however, this information is not directly relevant to the Denial of Access Complaint at issue herein.

judicial proceeding. United Jersey Bank v. Wolosoff, 196 N.J. Super. 553, 567 (App. Div. 1984)(holding that the privilege results in suppression of the evidence, which may likely produce a false judgment based on the suppression of such evidence due to privilege).

Counsel states that the following balancing test was approved by the Supreme Court:

“[a] flexible balancing process adaptable to different circumstances must be conducted to determine whether the need for secrecy substantially outweighs the presumption of access... The need for secrecy must be demonstrated with specificity as to *each document*. Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient ... [t]he trial court ... must examine *each document* individually and make factual findings with regard to why [suppression is warranted] ... The need for secrecy should extend no further than necessary to protect the [demonstrated need for] confidentiality.” Hammock v. Hoffman-LaRoche, Inc., 142 N.J. 356, 381 (1995). *See also* Payton v. N.J. Turnpike Authority, 148 N.J. 524, 540 (1997).

Counsel avers that even if a communication is protected, factual recitals in the communication are not protected. *See* Keddie v. Rutgers, State University, 148 N.J. 36 (1997)(holding that “redactions must be considered as an alternative to nondisclosure” and that a balancing test must be employed as opposed to denial of the whole document).

Counsel contends that the GRC has summarily excluded many records based on the City’s fraudulent claim of attorney-client privilege without conducting a balancing test and considering redactions. Counsel asserts that there are several reasons why these alleged exemptions have been improperly granted. Counsel argues that first, the City fraudulently represented that Ms. Crowley is a client when no evidence of such has been provided. Counsel argues that in order to benefit from the privilege exemption a person must have valid legal representation. Counsel asserts that Ms. Crowley is not a client of the City, and thus is not represented by the City’s in-house counsel (“IHC”) or outside counsel (“OC”); therefore, any communications which include Ms. Crowley result in a waiver of the attorney client privilege. Counsel argues that merely because Ms. Crowley is a citizen member of the Coalition (a co-petitioner before the Surface Transportation Board (“STB”)) does not mean that she is entitled to the protection of attorney-client privilege for communications with IHC and OC. Further, Counsel argues that many of the communications do not copy Mr. Montagne, who represented the City in the STB proceedings. Counsel asserts that the GRC’s broad allowance of attorney-client privilege has exempted records between Ms. Joanne Monahan (“Ms. Monahan”) and Mr. John Curley (“Mr. Curly”) and correspondence from Ms. Crowley to these individuals without considering the release of factual information, which would have allowed the Complainant to ascertain if any of the communications were legitimately privileged.

Further, Counsel argues that the GRC has thus permitted undue interference in the land use process by upholding the attorney-client privilege exemption of IHC and OC communications involving decisions pending before the City’s independent boards.

Counsel avers that the Planning Board (represented by Mr. John Hamill) and the Zoning Board of Adjustment (represented by Mr. Vincent LaPaglia) have their own independent attorneys; therefore, correspondence from IHC and OC including these boards must be disclosed. Counsel contends that if an objector works with IHC and OC to thwart a developer's approvals, communications cannot be exempt from disclosure as attorney-client privileged because the objectors, IHC and OC, do not represent the Planning Board or Zoning Board of Adjustment. Counsel contends that the only attorney-client privileged records were those communications between the attorney for the municipal agency and either the Planning Board or the Zoning Board of Adjustment.

Counsel reiterates that because the GRC has not ordered disclosure of the facts contained in the requested correspondence, the Complainant will not be able to ascertain the nature of the exempted communications. Counsel asserts that the nondisclosure of these facts further impedes the Complainant's ability to determine whether third party recipients received privileged material. Counsel argues that record No. 1179 refers to an e-mail chain, but does not identify the names of other parties copied in the string. Counsel argues that to the extent that other exempted e-mail chains, such as record No. 2338, are copied to individuals not represented by the City, such documents must be disclosed. Further, Counsel argues that there are several records in which Ms. Crowley was listed as a recipient or was the author (See record No. 2393: Letter from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copy to Maureen Crowley (Co-Petitioner) dated 2/23/2005, Re: 6th Street Embankment). Counsel argues that because OC does not represent Ms. Crowley, attorney-client privilege is waived because a non-client was copied. Counsel notes that record No. 2398, No. 2462, No. 2716, No. 3047, No. 3130, No. 3163, No. 3165, No. 3166, No. 3169, No. 3172, No. 3199, No. 3216, No. 4004, No. 4006, No. 4012, No. 4025, No. 4026, No. 4028, No. 4038, No. 4040, No. 4041, No. 4046 and No. 4048 should also be disclosed for the foregoing reasons. Counsel finally notes that, at a minimum, the factual portions of the above records and more extensive description of the redacted information is essential for the Complainant to make a determination as to whether the asserted privilege applies.

With regard to the applicability of the exemption to disclosure in OPRA for advisory, consultative or deliberative material, Counsel states that the advisory, consultative or deliberative ("ACD") exemption is specifically limited to inter-agency or intra-agency communications that are pre-decisional and deliberative in nature. N.J.S.A. 47:1A-1.1. Counsel states that the court in In Re: Liquidation of Integrity Insurance Co., 165, N.J. 75 (2000) contemplated the issue of ACD, stating 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. Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980). Second, the document must be deliberative in nature, containing opinions, recommendations, or advice about agency policies. *Ibid.* Purely factual material that does not reflect deliberative processes is not protected. Environmental Protection Agency v. Mink, 410 U.S. 73, 88, 93 S. Ct. 827, 837, 35 L. Ed. 2d 119, 132 (1973), superseded by statute on other grounds noted by, Zweibon v. Mitchell, 516

F.2d 594, 642 (D.C. Cir. 1975). Once the government demonstrates that the subject materials meet those threshold requirements, the privilege comes into play.

Despite the existence of the privilege, with its concomitant presumption against disclosure, a litigant may obtain deliberative process materials if his or her need for the materials and the need for accurate fact-finding override the government's significant interest in non-disclosure. Warner, supra, 742 F.2d at 1161

Under the federal cases, when determining whether a litigant has sustained the burden of overcoming the deliberative process privilege, factors to consider include: 1) the relevance of the evidence; 2) the availability of other evidence; 3) the government's role in the litigation; and 4) the extent to which disclosure would hinder frank and independent discussion regarding contemplated policies and decisions. Warner, supra, 742 F.2d at 1161. *Id.* at 84-86.

Counsel argues that because Ms. Crowley is not an employee of the City, communications with her are subject to disclosure since they are neither inter-agency or intra-agency communications. Counsel notes that record No. 3184, improperly classified by the City as attorney-client privileged and classified by the GRC as ACD material, is a communication between Ms. Crowley and a steering committee: this record is not exempt from disclosure under OPRA as ACD material. Counsel further argues that several other e-mail strings classified as exempt as ACD material are questionable. *See* record No. 69. Counsel argues that to the extent that any of the records are copied to individuals that are not employees of the City, such are not protected under the ACD exemption. *See* record No. 943, No. 1202, No. 1203, No. 1204, No. 1205, No. 1206, No. 1207, No. 1208, No. 1215, No. 1232, No. 1258, No. 2580, No. 2581 and No. 2585.

Counsel asserts that another problematic aspect of the Council's May 27, 2010 Interim Order is the broad allowance of the ACD exemption for records involving either the OC or IHCs participation in matters exclusively within the jurisdiction of either the Planning Board, Zoning Board of Adjustment or the Historic Preservation Commission. Counsel asserts that the GRC's determination that such communications were exempt as ACD material effectively allowed the IHC and OC to interfere with the independent agencies.

Counsel disputes the alleged pre-decisional nature of the requested communications as characterized in the Council's order. Counsel states that the City initially made the determination to condemn the properties along the Embankment in 2005. Counsel states that the City subsequently decided to file a petition with the STB to declare the Embankment as a line of rail in 2006. Counsel argues that without providing access to the factual elements of the records, it is impossible to determine how the ACD exemption applies. Counsel argues that the City has a duty to show how the records are

ACD, unless the legitimate public policy the City is trying to protect is stopping LLC's from developing the City property.¹⁰

Counsel contends that the City has failed to identify how the records were ACD; however, the exemption was almost entirely accepted by the GRC to the extent that even factual information contained within said records was withheld. Counsel asserts that record No. 3078, a communication between Ms. Crowley and the Mayor, is not considered ACD material, while other involving Ms. Crowley were considered to be ACD. Moreover, Counsel asserts that record No. 2845 consisting of a memorandum from Mr. Andrew Strauss ("Mr. Strauss") and his resume was considered exempt; however, there is no indication that the City ever retained Mr. Strauss for any purpose. Counsel asserts that Mr. Strauss was apparently a consultant for the Coalition; therefore, the record should be disclosed because the City falsely asserted that Mr. Strauss was the City's consultant. Counsel finally argues that certain other documents could be disclosed in part, such as records with handwritten notes by City personnel. *See* record No. 2974, No. 3167 and No. 3184.

Counsel also contends that the requests for financial records are not overly broad. Counsel states that attorney's bills, resolutions and contracts are required to be readily available under OPRA. Counsel asserts that there are many GRC decisions with comparable requests. Counsel states that although OPRA does not define "extraordinary" in the context of special service charges, the GRC established ten (10) factors for determining such in Fisher v. Department of Law and Public Safety, Division of Law, GRC Complaint No. 2004-55 (November 2004).

Counsel asserts that the Complainant requested current records, including information regarding consultants retained by the City. Counsel states that "[i]mmediate access ordinarily shall be granted to budgets, bills vouchers, contracts..." N.J.S.A. 47:1A-5.e. Counsel asserts that based on the foregoing, OPRA recognizes that these types of records shall be readily available and consequently, a request for such is not extraordinary. Counsel argues that any good faith contained within the City's assertion that the Complainant's request was overly broad is debased by the breadth of the privilege log. Counsel argues that the City had a distinct obligation to maintain financial records in a manner conducive to providing immediate access. Counsel contends that the City knew exactly where the requested records were; however, the City attempted to scatter the information because it knew that said information would be inimical to its own interest. Counsel argues that the GRC should not simply rely on the City's assertion that it did not know where to locate the records responsive.

In conclusion, Counsel reiterates that the City has claimed that Ms. Crowley is a member of the City who can communicate with the City's counsel and have such communications exempted under OPRA as attorney-client privileged material. Counsel contends that this is inapposite to the facts: that Ms. Crowley is not a City employee and all communications involving her are not exempt from disclosure under OPRA as attorney-client privileged pursuant to United States v. Zolin, 809 F.2d 1411 (9th Cir.

¹⁰ Counsel further argues that the Complainant has a legitimate need relevant to his constitutional and statutory rights to obtain the requested records.
Steven Hyman v. City of Jersey City (Hudson), 2007-118 – Supplemental Findings and Recommendations of the Executive Director

1987). Counsel alleges that the GRC's decision is a direct result of the City misleading the GRC into believing that all parties taking part in the communications responsive to the Complainant's request were in a privileged relationship with the City. Counsel states that, based on all of the foregoing, she is requesting reconsideration of Council's May 27, 2010 Interim Order.

July 1, 2010

Custodian's objections to the Complainant Counsel's request for reconsideration, attaching Resolution No. 05-815 dated September 28, 2005. The Custodian states that the City received the Complainant's request for reconsideration on June 22, 2010. The Custodian argues that the Complainant has failed to provide sufficient evidence to support that the Council's May 27, 2010 Interim Order was based on extraordinary circumstances, a mistake, fraud and illegality.

The Custodian's Counsel submits a letter brief in support of the Custodian's objections to the request for reconsideration.

Counsel disputes the Complainant's allegations that false assertions by the City led the GRC to believe that the Coalition was a government entity. Counsel contends that this allegation is not supported by evidence in the record. Counsel states that the Coalition is a nonprofit corporation whose officers include Ms. Crowley (named in the Complainant's request for reconsideration). Counsel avers that the City and the Coalition were joint petitioners in an application submitted to the STB seeking to set aside a sale of properties in the Embankment.

Counsel states that page 1 of the City's document index indicates that Ms. Crowley was not a City employee; rather, she was an officer of the Coalition, and, in that capacity, was a co-petitioner with the City on an application before the STB. Counsel further states that the index indicates that documents from Ms. Crowley and the Coalition to or from City employees, officials, or legal counsel were withheld because they were exempt from disclosure based on attorney-client privilege that exists among persons who share a common interest in litigation. *See LaPorte v. Gloucester Cty., Bd. Of Chosen Freeholders*, 340 N.J. Super. 254, 262-263 (App. Div. 2001).

Counsel avers that the common interest exception may be asserted for communications among different parties if the following requirements are met:

1. the disclosure is made due to actual or anticipated litigation;
2. for the purposes of furthering a common interest; and
3. the disclosure is made in a manner not inconsistent with maintaining confidentiality against adverse parties." *Id.* at 262.

Counsel contends that the communications between the City, Ms. Crowley and the Coalition satisfy all three of the above requirements. Counsel argues that the Coalition and the City are co-parties in ongoing litigation before the STB. Further, Counsel argues that the Coalition and City share the common interest of seeking to have Conrail's sale of the Embankment to the Complainant set aside so that the City may purchase this property. Counsel argues that the City wishes to buy and preserve the Embankment

property which is also the goal of the Coalition. Counsel also argues that none of the records to which the City is claiming privilege have been made available to the public or third parties who are not involved in the STB litigation.

Counsel asserts that the attorney-client privilege is not limited to communications between attorneys for the parties who share a common litigation interest. Counsel states that communications between counsel and an individual representative of the party with a common interest is also protected. *See U.S. v. Schwimmer*, 892 F.2d 237, 244 (2nd Cir. 1989). Counsel states that the privilege further extends to communications made directly by one party to the other party. *See In Re: Grand Jury Subpoenas, 89-3 and 89-4*, 902 F.2d 244, 249 (4th Cir. 1990)(holding that persons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims). Counsel argues that based on the above cited cases, communications made to or from Ms. Crowley and the Coalition to or from City employees, officials or attorneys are protected by the common interest doctrine, which is recognized as a form of attorney-client privilege.

Counsel notes that for all records not provided to the Complainant that involved communications among the City, Ms. Crowley and the Coalition, the City indicated that same were protected by attorney-client privilege. Counsel states that the City claimed that a total of twenty-two (22) records were exempt as attorney-client privileged material (record No. 2462, No. 2716, No. 2845, No. 2974, No. 3047, No. 3078, No. 3130, No. 3163, No. 3165, No. 3166, No. 3167, No. 3169, No. 3184, No. 3199, No. 3216, No. 3228, No. 4006, No. 4024, No. 4040, No. 4041, No. 4048 and No. 4049). Counsel argues that there was not one instance in which the City claimed that any of records not provided were exempt from disclosure as ACD material. Counsel asserts that the ACD exemption can only be claimed for communications between certain governmental agencies. Counsel contends that the Complainant's allegations that the City committed fraud and illegalities are therefore baseless.

Moreover, Counsel states that the Complainant alleges that the City has not produced any information supporting the exemption of records involving the Coalition. Counsel states that the Complainant has been in possession of the City's privilege log since March 2007; yet, the Complainant now raises the issue for the first time following the Council's May 27, 2010 Interim Order. Counsel reiterates that the Coalition (including Ms. Crowley in her capacity as an officer) is a nonprofit corporation participating as a joint petitioner with the City in a matter before the STB in which the Complainant is an adversary.

Additionally, Counsel disputes the Complainant's allegation that the City cannot claim the attorney-client privilege exemption for communications involving Mr. Montange, who is identified in the City's document index as the City's outside counsel ("OC"). Counsel attaches a copy of Resolution 05-815 approved by City Council on September 28, 2005 and authorizing a professional services agreement between the City and Mr. Montange. Counsel states that the attached document was record No. 906 and provided to the Complainant years ago.

Counsel states that based on the foregoing reasons, the City requests that the Complainant's request for reconsideration be denied.

Analysis

Whether the Custodian complied with the Council's May 27, 2010 Interim Order?

The Council's May 27, 2010 Interim Order specifically directed the Custodian to "...disclose the following records to the Complainant:

Record #2604 4-page ordinance Chapter 345-31 dated 11/22/2005;

Record #2845 Resume of Andrew Strauss, Planning Consultant (do not disclose 4-page report accompanying resume);

Record #3078 Letter from Maureen Crowley to Jerramiah Healy dated 7/25/2005 Re: PR Harsimus Stem Embankment.

Said Order also directed the Custodian to provide certified confirmation of compliance to the GRC's Executive Director within five (5) business days from receipt of said Order.

On June 8, 2010, the Custodian responded in writing to the Council's Interim Order certifying that record No. 2604, No. 2845 and No. 3078 were provided to the Complainant's Counsel via overnight mail on the same date.

Therefore, because the Custodian provided the records ordered to be disclosed to the Complainant on June 8, 2010, and because the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within five (5) business days of receiving the Council's Interim Order, the Custodian has complied with the Council's May 27, 2010 Interim Order.

Whether the Complainant has met the required standard for reconsideration of the Council's May 27, 2010 Findings and Recommendations?

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).

The Complainant requested reconsideration of the Council's June 2, 2010 Interim Order pursuant to *N.J.A.C. 5:105-2.10* based on extraordinary circumstances, mistake, fraud and illegality. In support of his motion for reconsideration, the Complainant submitted a five (5) page summary of evidence which he had already submitted to the GRC in support of his Denial of Access Complaint, as well as copies of additional correspondence and materials not relevant to the instant matter.

The Complainant contends that the City made several fraudulent assertions upon which the GRC erroneously relied in making its decision, *to wit*: the GRC was led to believe incorrectly that the Coalition is associated with the City and is thus protected by the attorney-client privilege and advisory, consultative or deliberative ("ACD") exemptions to disclosure. The Complainant argues that because Ms. Crowley is not an employee of the City, communications with her are subject to disclosure since they are neither inter-agency or intra-agency communications. The Complainant notes that record No. 3184, improperly classified by the City as attorney-client privileged and classified by the GRC as ACD material, is a communication between Ms. Crowley and a steering committee: counsel therefore contends that this record is not exempt from disclosure under OPRA as ACD material. The Complainant further argues that several other e-mail strings classified as exempt as ACD material are questionable.

The Complainant asserts that because the GRC has not ordered disclosure of the facts contained in the requested correspondence, the Complainant will not be able to ascertain the nature of the exempted communications, and further asserts that the nondisclosure of these facts further impedes the Complainant's ability to determine whether third party recipients received privileged material.

Specifically, Complainant argues that record No. 1179 refers to an e-mail chain, but does not identify the names of other parties copied in the string. The Complainant argues that to the extent that other exempted e-mail chains, such as record No. 2338, are copied to individuals not represented by the City, such documents must be disclosed. Further, Counsel argues that there are several records in which Ms. Crowley was listed as a recipient or was the author (See record No. 2393: Letter from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copy to Maureen Crowley (Co-Petitioner) dated 2/23/2005, Re: 6th Street Embankment). The Complainant argues that because OC does

not represent Ms. Crowley, attorney-client privilege is waived because a non-client was copied. Counsel finally notes that, at a minimum, the factual portions of the above records and more extensive description of the redacted information is essential for the Complainant to make a determination as to whether the asserted privilege applies.

With regard to the applicability of the exemption to disclosure in OPRA for advisory, consultative or deliberative material, Complainant asserts that the advisory, consultative or deliberative (“ACD”) exemption is specifically limited to inter-agency or intra-agency communications that are pre-decisional and deliberative in nature. N.J.S.A. 47:1A-1.1 and argues that because Ms. Crowley is not an employee of the City, communications with her are subject to disclosure since they are neither inter-agency or intra-agency communications. Specifically, Complainant notes that record No. 3184, which she contends was improperly classified by the City as attorney-client privileged and classified by the GRC as ACD material, is a communication between Ms. Crowley and a steering committee. Complainant asserts that this record is not exempt from disclosure under OPRA as ACD material. Complainant further argues that several other e-mail strings classified as exempt as ACD material are questionable. *See* record No. 69. Complainant argues that to the extent that any of the records are copied to individuals that are not employees of the City, such are not protected under the ACD exemption. *See* record No. 943, No. 1202, No. 1203, No. 1204, No. 1205, No. 1206, No. 1207, No. 1208, No. 1215, No. 1232, No. 1258, No. 2580, No. 2581 and No. 2585.

Additionally, Complainant disputes the pre-decisional nature of the requested communications as characterized in the Council’s order. Complainant states that the City initially made the determination to condemn the properties along the Embankment in 2005. Complainant states that the City subsequently decided to file a petition with the STB to declare the Embankment as a line of rail in 2006. Complainant argues that without providing access to the factual elements of the records, it is impossible to determine how the ACD exemption applies. Complainant further argues that he has a legitimate need relevant to his constitutional and statutory rights to obtain the requested records. Complainant argues that the City has a duty to show how the records are ACD, unless the legitimate public policy the City is trying to protect is stopping LLC’s from developing the City property.¹¹ Complainant contends that the City has failed to identify how the records were ACD; however, the exemption was almost entirely accepted by the GRC to the extent that even factual information contained within said records was withheld.

The Complainant asserts that he requested current records, including information regarding consultants retained by the City. The Complainant asserts that based on N.J.S.A. 47:1A-5.e., OPRA recognizes that these types of records shall be readily available and consequently, a request for such is not extraordinary. The Complainant argues that any good faith contained within the City’s assertion that the Complainant’s request was overly broad is debased by the breadth of the privilege log. The Complainant argues that the City had a distinct obligation to maintain financial records in a manner conducive to providing immediate access. Complainant contends that the City knew

¹¹ Counsel further argues that the Complainant has a legitimate need relevant his constitutional and statutory rights to obtain the requested records.
Steven Hyman v. City of Jersey City (Hudson), 2007-118 – Supplemental Findings and Recommendations of the Executive Director

exactly where the requested records were; however, the City attempted to scatter the information because it knew that said information would be inimical to its own interest. Complainant argues that the GRC should not simply rely on the City's assertion that it did not know where to locate the records responsive.

Complainant's arguments that the attorney-client privilege does not apply to communications from or to the City which were generated by or sent to Maureen Crowley, or on which Maureen Crowley was copied, are not supported by the law. The evidence of record clearly shows that Maureen Crowley was an officer of the Coalition, and, in that capacity, was a co-petitioner with the City on an application before the STB.

The attorney-client privilege is not limited to communications between attorneys for the parties who share a common litigation interest. Communications between counsel and an individual representative of the party with a common interest is also protected. *See U.S. v. Schwimmer*, 892 F.2d 237, 244 (2nd Cir. 1989). The privilege further extends to communications made directly by one party to the other party. *See In Re: Grand Jury Subpoenas, 89-3 and 89-4*, 902 F. 2d 244, 249 (4th Cir. 1990)(holding that persons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims).

In *Schwimmer*, the defendant was convicted on conspiracy to conduct the affairs of an enterprise through a pattern of racketeering activity, receiving illegal payments, conspiracy and income tax evasion. *United States v. Schwimmer*, 892 F.2d 237, 238 (2d Cir. N.Y. 1989). Among other arguments, the defendant contended that his attorney-client privileges were violated by the use of information, documents and grand jury testimony furnished by an accountant hired to assist the attorneys representing Schwimmer and a co-defendant in the conduct of a joint defense. *Ibid*. The defendant claimed that he was entitled to a hearing to determine whether these and other privileges had in fact been violated. *Id*. On appeal, the court remanded for a hearing to determine whether the attorney-client privilege was violated because the trial court erred in not conducting an evidentiary hearing. After that hearing, the district court found that no violation of the privilege had occurred because no use or derivative use of privileged information was made by the government. *United States v. Schwimmer*, 924 F.2d 443, 445 (2d Cir. N.Y. 1991).

Moreover, in *In re Grand Jury Subpoenas, 89-3 & 89-4, John Doe 89-129 (Under Seal)*, 902 F.2d 244 (4th Cir. Va. 1990), the movant contracted with the Army to perform certain services. *Id*. at 245. Later, the movant filed an administrative claim for an adjustment of contract costs. *Id*. Then, the movant assigned its contract with the Army to its subsidiary, without the approval of the army. *Id*. The subsidiary agreed to waive the attorney-client privilege, and movant objected. *Id*. The United States District Court for the Eastern District of Virginia required the movant's subsidiary to turn over all papers in its possession to the grand jury, although the papers might well be subject to either the attorney-client or work product privilege. *Id*. at 246. On appeal, the U.S. District Court held that the documents that related to the prosecution of the claim against the plaintiff Army were subject to a joint defense privilege. *Id*. at 248-50. The court reasoned that those who shared a common interest in litigation should be able to communicate with their respective attorneys and each other to more effectively prosecute or defend their

claim. *Id.* Therefore, the privilege to waive the attorney-client privilege could not be made unilaterally and both the subsidiary and movant had to agree together to waive the privilege. *Id.*

Finally, the evidence of record clearly establishes that Ms. Crowley, in her capacity as an officer of the Coalition, shared a common interest with the City in the litigation regarding the subject railroad embankment. Additionally, the Custodian has established that Charles Montagne, Esq., was one of the attorneys representing the City. As such, the attorney-client privilege applies to the correspondence sent to or from, or copied, between and among Ms. Crowley, the City, and their respective attorneys. United States v. Schwimmer, 892 F.2d 237, 238 (2d Cir. N.Y. 1989); In re Grand Jury Subpoenas, 89-3 & 89-4, John Doe 89-129 (Under Seal), 902 F.2d 244 (4th Cir. Va. 1990).

Complainant also argues that the ACD exemption to disclosure cannot apply to the requested records because this exemption is specifically limited to inter-agency or intra-agency communications that are pre-decisional and deliberative in nature. N.J.S.A. 47:1A-1.1 and argues that because Ms. Crowley is not an employee of the City, communications with her are subject to disclosure since they are neither inter-agency or intra-agency communications. Complainant notes that record No. 3184 is a communication between Ms. Crowley and a steering committee, and asserts that this record is therefore not exempt from disclosure under OPRA as ACD material. Complainant further argues that several other e-mail strings classified as exempt as ACD material are questionable and, to the extent that any of the records are copied to individuals who are not employed by the City, the ACD exemption has been waived. *See* record No. 69, No. 943, No. 1202, No. 1203, No. 1204, No. 1205, No. 1206, No. 1207, No. 1208, No. 1215, No. 1232, No. 1258, No. 2580, No. 2581 and No. 2585. Complainant also asserts that the requested communications cannot be pre-decisional because the City initially made the determination to condemn the properties along the Embankment in 2005, and subsequently filed a petition with the STB to declare the Embankment as a line of rail in 2006. Complainant argues that factual material within such records should have been disclosed.

Complainant's assertions have no basis in the law.

In Education Law Center, et als., v. New Jersey Department of Education, 198 N.J. 274 (2009), the New Jersey Supreme Court determined the appropriate test for when a government record which contains both factual data and allegedly deliberative material may be withheld from public release based on the "deliberative process" exemption in the Open Public Records Act, N.J.S.A. 47:1A-1 to -13 (OPRA). *Id.* at 274.

The plaintiff, Education Law Center ("ELC"), represented children in ongoing litigation focused on funding for education to the State's poorest school districts. *Id.* The State enacted a revised funding formula in the School Funding Reform Act of 2008 ("SFRA"), which was under challenge by the litigants represented by ELC. *Id.* at 275. The State Department of Education ("DOE") was instrumental in the development of the new formula. DOE created several versions of a funding formula before providing recommendations to the Legislature. *Id.* In 2006, ELC filed an OPRA request for the

disclosure of records related to the analysis of education costs undertaken by the DOE's Office of School Funding. DOE provided documents, some partially redacted. ELC filed a complaint in Superior Court, claiming that the redactions violated OPRA and the common law right of access to government records. *Id.*

This appeal involved a memorandum drafted in 2003, referred to as the "Simulation Memo," which served as an internal document for the Office of School Funding. *Id.* After outlining three possible funding options, the Memo detailed statistical data run through each formula to determine certain costs for each alternative. *Id.* The redacted version released to ELC omitted that statistical information for two of the three alternatives discussed in the Memo. *Id.*

The trial court ordered DOE to release an un-redacted copy of the Simulation Memo. *Id.* at 276. DOE appealed, arguing that the Memo merited exemption under OPRA as deliberative process material. *Id.* DOE also argued that the court incorrectly weighed DOE's interest in nondisclosure of the material, resulting in an improper balancing of the interests under the common law. *Id.* In a published opinion, the Appellate Division affirmed the Law Division's decision. (Educ. Law Ctr. v. N.J. Dep't of Educ., 396 N.J. Super. 634 (2007)). The court held that the Simulation Memo, which contained factual material, was not "deliberative," and therefore did not qualify for OPRA's exemption from disclosure for deliberative process material. *Id.* The court also ordered the document's release under the common law. *Id.*

The Supreme Court granted DOE's motion for leave to appeal and determined that a government record which contains factual components is subject to the deliberative process privilege when it was used in the decision-making process **and** its disclosure would reveal the nature of the deliberations that occurred during that process. 198 N.J. 280.

In doing so, the Supreme Court noted that:

"the Simulation Memo contained factual data converted into scenarios for the purpose of assisting in the agency's consideration of options. This was not raw, neutral, data. It was manipulated to provide organized information useful to the DOE, specifically for the purpose of aiding the agency in deciding on an aspect of a new funding scheme. It plainly was created during, and used as part of, DOE's deliberative process. As for the second part of the examination for deliberative-process protection, the document must be capable of reflecting what people were thinking and considering during the process of deliberating. This Memo, concerning data created specifically to provide information that DOE deemed useful during its decision-making process, shows that persons were using the formatted data for the purposes of ascertaining something to be decided. The document is, therefore, reflective of DOE's deliberations. As such, it is entitled to protection under the deliberative process privilege and, therefore, is exempt from release under OPRA." *Id.* at 302.

The Supreme Court further observed that:

“[t]he Simulation Memo was an essential part of the process employed by DOE in reaching its decisions about a revised school funding formula. ... The detrimental impact that disclosure would have on DOE's deliberative process would impede agency functions by discouraging open and frank discussion and recommendations from agency employees to those higher up in DOE's hierarchy now and in the future. Manipulations of data to assess and consider the impact of variations in school funding do not make documents showing such results less "deliberative" in the give and take among departmental administrators working on alternatives for superior-level policymakers. The Memo here has been found to reflect the agency's deliberations in selections or choices under consideration. We have no doubt that disclosure of the Simulation Memo, created during the process of DOE's deliberative and developmental activities associated with a revised approach to school funding, and reflective of persons' thinking on matters to be ascertained in the decision-making deliberations, presents the danger of chilling future program improvement and other agency decision-making.” *Id.* at 304.

The judgment of the Appellate Division was therefore reversed and the matter was remanded to the Law Division for the entry of an Order consistent with the Court's opinion. *Id.* 305.

Complainant's assertion that the GRC should order disclosure of the facts contained in the requested correspondence in order to permit the Complainant to ascertain the nature of the exempted correspondence and to facilitate the Complainant's ability to determine whether third party recipients received privileged material is, therefore, not supported by the law. Because facts contained in the requested communications provide information that the City and its co-litigants deemed useful during the decision-making process of how to proceed on the status of the Embankment and show that persons were using the data for the purposes of ascertaining something to be decided, such documents are, therefore, reflective of the City's deliberations. As such, these records are entitled to protection under the deliberative process privilege and, therefore, are exempt from release under OPRA. Education Law Center, et als., v. New Jersey Department of Education, 198 N.J. 274, 302 (2009).

Moreover, Complainant's unsupported assertion that no attorney-client privilege attaches to communications copying, to or from Charles Montagne, Esq., because Mr. Montagne is not licensed to practice law in New Jersey has no basis in the law. *See Maldonado v. State of New Jersey*, 225 F.R.D. 120 (D.N.J.2004); Masone v. Levine, 382 N.J. Super. 181 (App.Div. 2005).

Complainant also argues that the requests for financial records are not overly broad, and states that attorney's bills, resolutions and contracts are required to be readily available under OPRA, and the Custodian was responsible under OPRA to maintain the bills in a manner such that immediate access could be effectuated. Complainant states that although OPRA does not define "extraordinary" in the context of special service charges, the GRC established ten (10) factors for determining such in Fisher v.

Complainant is conflating two completely different legal issues. The issue of whether a request is invalid under OPRA because it is overly broad and/or fails to specify identifiable government records is separate from the issue of whether a custodian's fulfillment of a valid OPRA request requires an extraordinary expenditure of time and effort to accommodate the request, therefore permitting a public agency to charge a special service charge under N.J.S.A. 47:1A-5.c.

The evidence of record shows that Items No. 2, 3, 4, 6, 7, 8, 9 and 10 of the Complainant's request sought appraisal reports from The McGuire Associates for two properties identified only by lot and block number, Council resolution(s) authorizing John Curley's legal services in the amount of \$56, 901.78; "[i]nvoices for Charles Montange's legal services based on two resolutions authorizing a total of \$40,000 in payments for services rendered by Charles Montange[;]" a "Council resolution authorizing McGuire Associates real estate appraisal services not to exceed \$25,000[;]" a "Council resolution authorizing Value Research Group real estate appraisal services[;]" a "Council resolution authorizing Verne V. Watley professional services[;]" and a "Council resolution authorizing Burns & Fiorina, Inc., demolition services..." These requests are overly broad under OPRA and would require the Custodian to conduct research in order to locate and identify records which may be responsive to the request.

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 Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005). As the court noted in invalidating MAG's request under OPRA:

"Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted." *Id.* at 549.

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.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),¹² the Superior Court references MAG in that the Court 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.”¹³

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court enumerated the responsibilities of a custodian and a requestor as follows:

“OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian, who is the person designated by the director of the agency, N.J.S.A. 47:1A-1.1, must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require “extraordinary expenditure of time and effort” and warrant assessment of a “service charge,” and, when unable to comply with a request, “indicate the specific basis.” N.J.S.A. 47:1A-5(a)-(j). The requestor must pay the costs of reproduction and submit the request with information that is essential to permit the custodian to comply with its obligations. N.J.S.A. 47:1A-5(f), (g), (i). *Research is not among the custodian's responsibilities.*” (Emphasis added), NJ Builders, 390 N.J. Super. at 177.

Moreover, the court cited MAG by stating that “...when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA...” The court also quoted N.J.S.A. 47:1A-5.g in that “[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” The court further stated that “...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency’s need to...generate new records...”

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) the Council held that “[b]ecause the Complainant’s OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005).”

¹² Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

¹³ As stated in Bent, *supra*.

In the instant matter, the Complainant's requests at Item Nos. 2, 3, 4, 6, 7, 8, 9 and 10 seeking appraisal reports, resolutions and invoices pertaining to particular subject matter or authorizing the services of particular entities fail to specify with reasonable clarity identifiable government records. These requests would require the Custodian to research all appraisal reports, resolutions and invoices in his possession to locate and identify those records which may be responsive to the request; request Item Nos. 2, 3, 4, 6, 7, 8, 9 and 10 are therefore invalid under OPRA.

Thus, because the Complainant's request at Item Nos. 2, 3, 4, 6, 7, 8, 9 and 10 seeks appraisal reports, resolutions and invoices pertaining to particular subject matter or authorizing the services of particular entities and fails to specify with reasonable clarity identifiable government records, these requests would require the Custodian to research all appraisal reports, resolutions and invoices in his possession to locate and identify those records which may be responsive to the request; they are overly broad and are therefore invalid under OPRA pursuant to MAG, supra, and New Jersey Builders, supra. See also Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

There is no evidence in the record that the Custodian charged, or that the Complainant paid, any amount representing a special service charge pursuant to N.J.S.A. 47:1A-5.c. There is no evidence that any special service charge is at issue in this complaint. Thus, Fisher v. Department of Law and Public Safety, Division of Law, GRC Complaint No. 2004-55 (November 2004) and the ten (10) factors for defining an "extraordinary" request in the context of special service charges, is inapplicable to this case.

Moreover, the Council does not have the authority to regulate the manner in which a Township maintains its files or which records a Township must maintain. Van Pelt v. Twp of Edison BOE, GRC Complaint No. 2007-179 (January 2008).

The Complainant therefore failed to submit any new evidence in support of his motion. 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 GRC acted arbitrarily, capriciously or unreasonably in disposing administratively of the complaint. See D'Atria, supra. Notably, the Complainant failed to submit any evidence or applicable legal authority to support his contention that extraordinary circumstances, mistake, fraud or illegality compels the Council to reconsider this matter.

Therefore, because the Complainant has failed to establish in his motion for reconsideration of the Council's May 27, 2010 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 has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing of the complaint, said motion 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’s delay in access to the requested records rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ...” N.J.S.A. 47:1A-11.a.

OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states:

“... If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]...” N.J.S.A. 47:1A-7.e.

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 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, 107 (App. Div. 1996).

In the instant complaint, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007), the Custodian’s failure to immediately grant or deny access to the requested bills and vouchers, request additional time to respond or request clarification of the request results in a violation of N.J.S.A. 47:1A-5.e. and the Custodian failed to bear his burden of proving a lawful denial of access to record No. 2604, No. 2845 and No. 3078 pursuant to N.J.S.A. 47:1A-6. However, because the

Custodian complied with the Council's March 25, 2009 and May 27, 2010 Interim Orders and because the Complainant's request Items No. 2 through No. 16 are invalid under OPRA, 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.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian provided the records ordered to be disclosed to the Complainant on June 8, 2010, and because the Custodian provided certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director within five (5) business days of receiving the Council's Interim Order, the Custodian has complied with the Council's May 27, 2010 Interim Order.
2. Because the Complainant's request at Item Nos. 2, 3, 4, 6, 7, 8, 9 and 10 seeks appraisal reports, resolutions and invoices pertaining to particular subject matter or authorizing the services of particular entities and fails to specify with reasonable clarity identifiable government records, these requests would require the Custodian to research all appraisal reports, resolutions and invoices in his possession to locate and identify those records which may be responsive to the request; they are overly broad and are therefore invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007). *See also* Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
3. Because the Complainant has failed to establish in his motion for reconsideration of the Council's May 27, 2010 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 has failed to show that the GRC acted arbitrarily, capriciously or unreasonably in disposing of the complaint, said motion 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).
4. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA

request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007), the Custodian's failure to immediately grant or deny access to the requested bills and vouchers, request additional time to respond or request clarification of the request results in a violation of N.J.S.A. 47:1A-5.e. and the Custodian failed to bear his burden of proving a lawful denial of access to record No. 2604, No. 2845 and No. 3078 pursuant to N.J.S.A. 47:1A-6. However, because the Custodian complied with the Council's March 25, 2009 and May 27, 2010 Interim Orders and because the Complainant's request Items No. 2 through No. 16 are invalid under OPRA, 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.

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Approved By: Catherine Starghill, Esq.
Executive Director

August 17, 2010



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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

LORI GRIFA
Acting Commissioner

INTERIM ORDER

May 27, 2010 Government Records Council Meeting

Steve Hyman
Complainant

Complaint No. 2007-118

v.

City of Jersey City (Hudson)
Custodian of Record

At the May 27, 2010 public meeting, the Government Records Council (“Council”) considered the May 20, 2010 *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 provided the GRC with the requested records and the Custodian’s certification reiterating that all the records are exempt from disclosure as attorney client privileged or advisory, consultative or deliberative material in compliance with the Council’s March 25, 2009 Interim Order on April 6, 2009, in a timely manner. Therefore, the Custodian complied with the Council’s March 25, 2009 Interim Order.
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 simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**

Specifically, the Custodian shall disclose the following records to the Complainant:

Record #2604 4-page ordinance Chapter 345-31 dated 11/22/2005;

Record #2845 Resume of Andrew Strauss, Planning Consultant (do not disclose 4-page report accompanying resume);



Record #3078 Letter from Maureen Crowley to Jerramiah Healy dated 7/25/2005 Re: PR Harsimus Stem Embankment.

3. Because the Complainant's request at Item Nos. 5, 11, 12, 13, 14, 15, and 16 seeks "[a]ll resolutions, contracts and invoices" pertaining to various subjects and because these request items do not identify specific government records and because the Custodian would be required to conduct research throughout all of the files in his possession to locate and identify those records which may be responsive to the request, these requests are overly broad and are therefore invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007). *See also* Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian's Explanation/ Citation for Non-disclosure or Redactions	Findings of the In Camera Examination¹
42	1 page e-mail from Greg Corrado, Jersey City employee ("JC"), to Douglas Greenfield (JC), dated 9/16/2006 3:24 PM, Re: 6 th Street Embankment	E-mail from Greg Corrado, to Douglas Greenfield	ACD	The report is exempt from disclosure in its entirety as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1. because the deliberative process privilege

¹ **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

	(with e-mail string attached) ²			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. <u>NLRB v. Sears, Roebuck & Co.</u> , 421 U.S. 132, 150, 95 S. Ct. 1504, 1516, 44 L. Ed. 2d 29, 47 (1975).
69	2 page e-mail from Douglas Greenfield (JC) to Greg Corrado (JC) dated 10/16/2006 2:30 PM, Re: Embankment Maps (with e-mail string attached) ³	E-mail from Douglas Greenfield to Greg Corrado	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
83	1 page e-mail from Douglas Greenfield (JC) to Greg Corrado (JC) dated 9/12/2006 11:00 AM, Re:	E-mail from Douglas Greenfield to Greg Corrado	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

² E-mail from Douglas Greenfield to Greg Corrado dated 9/12/2006 11:00 AM.

³ E-mail from Maureen Crowley to Douglas Greenfield dated 10/16/06 1:58 PM.

	6 th Street Embankment			
102	1 page e-mail from Douglas Greenfield (JC) to Barbara Netchert (JC) dated 5/26/2006 3:23 PM, Re: Sixth Street Embankment (with e-mail string attached) ⁴	E-mail from Douglas Greenfield to Barbara Netchert	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
103	1 page e-mail from Douglas Greenfield (JC) to Elena Bustamante (JC) dated 5/26/2006 1:30 PM, Re: Sixth Street Embankment (with e-mail string attached) ⁵	E-mail from Douglas Greenfield to Elena Bustamante	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
104	1 page e-mail from Douglas Greenfield (JC) to Barbara Netchert (JC) dated 5/26/2006 10:34 AM, Re: Sixth Street Embankment (with e-mail string attached) ⁶	E-mail from Douglas Greenfield to Barbara Netchert	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
105	1 page e-mail from Douglas	E-mail from Douglas	ACD	Exempt from disclosure as ACD

⁴ E-mail from Barbara Netchert to Douglas Greenfield dated 5/26/06 8:17 AM.

⁵ E-mail from Barbara Netchert to Douglas Greenfield dated 5/26/06 8:17 AM.

⁶ E-mail from Barbara Netchert to Douglas Greenfield dated 5/26/06 8:17 AM.

	Greenfield (JC) to Barbara Netchert (JC) dated 5/26/2006 9:11 AM, Re: Sixth Street Embankment (with e-mail string attached) ⁷	Greenfield to Barbara Netchert		material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
929	1 page e-mail from Barbara Netchert (JC) to Joanne Monahan, Esq., Jersey City In-House Legal Counsel (“IHC”), with copies to Robert Cotter (JC) and John Curley, Esq. (OC) dated 10/31/2006 11:33 AM, re: OPRA – Conrail Embankment (from Steve Hyman) (with e-mail string attached) ⁸	E-mail from Barbara Netchert to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
934	1 page e-mail from Douglas Greenfield (JC) to Greg Corrado (JC) with copies to Naomi Hsu and Robert Cotter (JC) dated 9/12/2006	E-mail from Douglas Greenfield to Greg Corrado	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁷ E-mail from Barbara Netchert to Douglas Greenfield dated 5/26/06 8:17 AM.

⁸ E-mail from Barbara Netchert to Melissa Sanchez dated 10/27/2006 3:40 PM.

	11:00 AM, Re: 6 th Street Embankment			
935	2 page e-mail from Douglas Greenfield (JC) to Greg Corrado (JC) with copies to Barbara Netchert (JC), Jeffrey Wenger, Naomi Hsu, Robert Cotter (JC) and William Matsikoudis (IHC) dated 10/16/2006 2:30 PM, Re: Embankment Maps (with e-mail string attached) ⁹	E-mail from Douglas Greenfield to Greg Corrado	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
943	1 page e-mail from Joanne Monahan, Esq. (IHC) to Barbara Netchert (JC) and Melissa Sanchez (JC) with copies to John Curley, Esq. (OC) and Robert Cotter (JC) dated 10/30/2006 8:15 PM, Re: OPRA – Conrail Embankment (from Steve Hyman) (with	E-mail from Joanne Monahan, Esq. to Barbara Netchert, et. als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁹ E-mail from Maureen Crowley to Douglas Greenfield dated 10/16/06 1:58 PM.

	e-mail string attached) ¹⁰			
944	1 page e-mail from John Curley, Esq., Jersey City Outside Legal Counsel (“OC”) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 2/13/2006 12:11 PM, Re: Sixth Street Embankment; 319.9405	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
945	1 page e-mail John Curley, Esq., (OC) to Robert Cotter (JC) with copies to Joanne Monahan, Esq. (IHC) and Carmine Scarpa (IHC) dated 2/21/2006 6:02 PM, Re: Sixth Street Embankment; 319.9405	E-mail from John Curley, Esq., to Robert Cotter	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
946	1 page e-mail John Curley, Esq., (OC) to Joanne	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged

¹⁰ E-mail from Barbara Netchert to Melissa Sanchez dated 10/27/2006 3:40 PM.

	Monahan, Esq. (IHC) with copies to Carmine Scarpa (IHC), Dan Wrieden (JC) and Robert Cotter (JC) dated 6/22/2006 6:21 PM, Re: 6 th Street Embankment; 319.9405			material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
947	1 page e-mail John Curley, Esq., (OC) to Douglas Greenfield (JC) with copies to Joanne Monahan, Esq. (IHC) and Robert Cotter (JC) dated 9/7/2006 10:48 AM, Re: 6 th Street Embankment; 319.9405	E-mail from John Curley, Esq., to Douglas Greenfield	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
958	1 page e-mail from Joanne Monahan, Esq. (IHC) to Barbara Netchert (JC) and Claire Davis (JC) dated 5/19/2006 3:01 PM, Re: embankment appeal (with e-mail string	E-mail from Joanne Monahan, Esq. to Barbara Netchert, et. als	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

¹¹ E-mail from Claire Davis to Barbara Netchert dated 5/19/2006 1:36 PM.

	attached) ¹¹			
959	1 page e-mail from Jennifer Bogdanski, Esq., (OC) to Claire Davis (JC) with copies to Joanne Monahan, Esq. (IHC) and John Curley, Esq. (OC) dated 10/25/2006 1:49 PM, Re: 6 th Street Embankment – interrogatory answers	E-mail from Jennifer Bogdanski, Esq., to Claire Davis	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
960	2 page e-mail from Jennifer Bogdanski, Esq., (OC) to Claire Davis (JC) with copies to Joanne Monahan, Esq. (IHC) and John Curley, Esq. (OC) dated 11/29/2006 12:00 PM, Re: 6 th Street Embankment – interrogatory answers (with e-mail string attached) ¹²	E-mail from Jennifer Bogdanski, Esq., to Claire Davis	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
964	12 page Draft Sixth Street Redevelopment Plan, undated	Draft Sixth Street Redevelopment Plan	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

¹² E-mail from Jennifer Bogdanski, Esq., to Claire Davis dated 10/25/2006 1:08 PM.

1071	1 page e-mail from Rachel Kennedy (JC) to Dan Wrieden (JC) dated 10/5/2004 5:10 PM, Re: 6 th Street Replan	E-mail from Rachel Kennedy to Dan Wrieden	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1072	1 page e-mail from Dan Wrieden (JC) to Maryann Bucci-Carter (JC), Robert Cotter (JC) and Rachel Kennedy (JC) dated 10/6/2004 8:29 AM, Re: 6 th Street Replan (with e-mail string attached) ¹³	E-mail from Dan Wrieden to Maryann Bucci-Carter, et. als	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1078	1 page e-mail Rachel Kennedy (JC) to Dan Wrieden (JC) and Robert Cotter (JC) dated 12/21/2004 11:22 AM, Re: 6 th Street Embankment	E-mail from Rachel Kennedy to Dan Wrieden, et als.	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1081	1 page e-mail from Rachel Kennedy (JC) to Dan Wrieden (JC) and Robert Cotter (JC) dated 1/7/2005 10:20 AM, Re: Embankment	E-mail from Rachel Kennedy to Dan Wrieden, et. Als	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

¹³ E-mail from Rachel Kennedy to Dan Wrieden, Maryann Bucci-Carter and Robert Cotter dated 10/5/2004 5:10 PM.

	Replan			
1082	1 page e-mail Robert Cotter (JC) to Dan Wrieden (JC) and Rachel Kennedy (JC) dated 1/9/2005 5:30 PM, Re: Embankment Replan (with e-mail string attached) ¹⁴	E-mail from Robert Cotter to Dan Wrieden, et. als	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1123	1 page e-mail Dan Wrieden (JC) to Benjamin Delisle, Jersey City Redevelopment Agency employee ("RA") dated 6/23/2005 1:10 PM, Re: Reservoir # 3 (with e-mail string attached) ¹⁵	E-mail from Dan Wrieden to Benjamin Delisle	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1124	1 page e-mail from Benjamin Delisle (RA) to Dan Wrieden (JC) dated 6/23/2005 2:15 PM, Re: Reservoir # 3 (with e-mail string attached) ¹⁶	E-mail from Benjamin Delisle to Dan Wrieden	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

¹⁴ E-mail from Rachel Kennedy to Robert Cotter and Dan Wrieden dated 1/7/2005 10:20 AM.

¹⁵ E-mail from Benjamin Delisle to Dan Wrieden dated 6/23/2005 12:07 PM.

¹⁶ E-mail from Dan Wrieden to Benjamin Delisle dated 6/23/2005 1:10 PM; E-mail from Benjamin Delisle to Dan Wrieden dated 6/23/2005 12:07 PM.

1139	1 page e-mail Dan Wrieden (JC) to Tyshammie Cooper (JC) dated 9/15/2005 9:09 AM, Re: grant (with e-mail string attached) ¹⁷	E-mail from Dan Wrieden to Tyshammie Cooper	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1143	1 page e-mail Cynthia Hadjiyannis, Historic Preservation Committee employee ("HP") to Dan Wrieden (JC) dated 1/28/2005 12:47 PM, Re: Tomorrow's Planning Board Meeting	E-mail from Cynthia Hadjiyannis, Historic Preservation Committee, to Dan Wrieden	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1145	1 page e-mail from Cynthia Hadjiyannis (HP) to Dan Wrieden (JC) dated 11/29/2005 11:48 AM, Re: Embankment Planning Bd. Application	E-mail from Cynthia Hadjiyannis to Dan Wrieden	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1161	1 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>

¹⁷ E-mail from Tyshammie Cooper to Dan Wrieden dated 9/13/2005 2:36 PM.

	Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 2/9/2006 4:34 PM, Re: Hyman. City of Jersey City (HPC Case); 319.9405			
1163	1 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 2/13/2006 12:11 PM, Re: Sixth Street Embankment; 319.9405	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1164	1 page e-mail from Jennifer Bogdanski, Esq.(OC) to Joanne Monahan, Esq. (IHC) with copy to John Curley, Esq. (OC) dated 2/21/2006 9:54 AM, Re: 6 th Street Embankment – Hyman motion to stay	E-mail from Jennifer Bogdanski, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>

1165	1 page e-mail from Charles Montange, Esq. (OC) to Jennifer Bogdanski, Esq. (OC) and Joanne Monahan, Esq. (IHC) with copy to John Curley, Es. (OC) dated 2/21/2006 11:43 AM, Re: 6 th Street Embankment – Hyman motion to stay (with e-mail string attached) ¹⁸	E-mail from Charles Montange, Esq., to Joanne Monahan, Esq., et. als	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1166	1 page e-mail from John Curley, Esq. (OC) to Robert Cotter (JC) with copies to Joanne Monahan, Esq. (IHC) and Carmine Scarpa (IHC) dated 2/21/2006 6:021 PM, Re: Sixth Street Embankment; 319.9405	E-mail from John Curley, Esq., to Robert Cotter	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1167	1 page e-mail from Joanne Monahan, Esq. (IHC) to Charles Montange, Esq.(OC) with	E-mail from Joanne Monahan, Esq. to C. Montange, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>

¹⁸ E-mail from Jennifer Bogdanski to Joanne Monahan, et. als. dated 2/21/2006 6:48 AM.

	copy to John Curley, Esq. (OC) dated 2/22/2006 7:32 PM, Re: 6 th Street Embankment – Hyman motion to stay (with e-mail string attached) ¹⁹			
1173	1 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Carmine Scarpa (IHC), Dan Wrieden (JC) and Robert Cotter (JC) dated 6/22/2006 6:21 PM, Re: 6 th Street Embankment – appeal of subdivision denial/checklist ordinance; 319.9405	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1178	1 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>

¹⁹ E-mail from Jennifer Bogdanski to Joanne Monahan, et. als. dated 2/21/2006 6:48 AM.

	Scarpa (IHC) dated 7/21/2006 6:55 PM, Re: Sixth St. Embankment; 319.9405			
1179	1 page e-mail from Charles Montange, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 7/21/2006 7:36 PM, Re: Sixth St. Embankment; 319.9405 (with e-mail string attached) ²⁰	E-mail from C. Montange, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1182	1 page e-mail from John Curley, Esq., (OC) to Douglas Greenfield (JC) with copies to Joanne Monahan, Esq. (IHC) and Robert Cotter (JC) dated 9/7/2006 10:48 AM, Re: 6 th Street Embankment;	E-mail from John Curley, Esq., to Douglas Greenfield	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

²⁰ E-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) dated 7/21/2006 3:52 PM, Re: Sixth St. Embankment.

	319.9405			
1201	1 page e-mail from William Matsikoudis, Esq., (IHC) to Joanne Monahan, Esq., (IHC) and Brian O'Reilly (JC) with copy to Barbara Netchert (JC) dated 11/13/2006 5:06 PM, Re: Sixth Street Embankment; 319.9405 (with e-mail string attached) ²¹	E-mail from William Matsikoudis, Esq., to Joanne Monahan, Esq., et als	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1202	1 page e-mail from Joanne Monahan, Esq. (IHC) to Brian O'Reilly (JC) and William Matsikoudis, Esq., (IHC) with copy to Barbara Netchert (JC) dated 11/13/2006 4:43 PM, Re: Sixth Street Embankment; 319.9405 (with	E-mail from Joanne Monahan, Esq., to Brian O'Reilly, et als.	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>

²¹ E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 4:43 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 4:40 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 4:06 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 4:03 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 3:20 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

	e-mail string attached) ²²			
1203	1 page e-mail from William Matsikoudis, Esq., (IHC) to Joanne Monahan, Esq. (IHC) and Brian O'Reilly (JC) with copy to Barbara Netchert (JC) dated 11/13/2006 4:40 PM, Re: Sixth Street Embankment; 319.9405 (with e-mail string attached) ²³	E-mail from William Matsikoudis, Esq., to Joanne Monahan, Esq., et als.	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1204	1 page e-mail from Joanne Monahan, Esq. (IHC) to Brian O'Reilly (JC) and William Matsikoudis, Esq., (IHC) with copy to Barbara Netchert (JC) dated 11/13/2006 4:07 PM, Re: Sixth St Embankment; 319.9405 (with	E-mail from Joanne Monahan, Esq., to Brian O'Reilly, et. als	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>

²² E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 4:40 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/ 2006 4:06 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 4:03 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 3:20 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

²³ E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 4:06 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 4:03 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 3:20 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

	e-mail string attached) ²⁴			
1205	1 page e-mail from William Matsikoudis, Esq., (IHC) to Joanne Monahan, Esq. (IHC) and Brian O'Reilly (JC) with copy to Barbara Netchert (JC) dated 11/13/2006 4:03 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string attached) ²⁵	E-mail from William Matsikoudis, Esq., to Joanne Monahan, Esq., et. als	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1206	1 page e-mail from William Matsikoudis, Esq., (IHC) to Joanne Monahan, Esq. (IHC) and Brian O'Reilly (JC) with copy to Barbara Netchert (JC) dated 11/13/2006 3:55 PM, Re: Sixth St Embankment; 319.9405 (with	E-mail from William Matsikoudis, Esq., to Joanne Monahan, Esq., et. als	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>

²⁴ E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 4:03 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 3:20 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

²⁵ E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 3:20 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

	e-mail string attached) ²⁶			
1207	1 page e-mail from Joanne Monahan, Esq. (IHC) to Brian O'Reilly (JC) and William Matsikoudis, Esq., (IHC) with copy to Barbara Netchert (JC) dated 11/13/2006 3:20 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string attached) ²⁷	E-mail from Joanne Monahan, Esq., to Brian O'Reilly, et. als	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1208	1 page e-mail from William Matsikoudis, Esq., (IHC) to Joanne Monahan, Esq. (IHC) and Brian O'Reilly (JC) with copy to Barbara Netchert (JC) dated 11/13/2006 3:16 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string	E-mail from William Matsikoudis, Esq., to Joanne Monahan, Esq., et. als	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>

²⁶ E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 3:20 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

²⁷ E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

²⁸ E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

	attached) ²⁸			
1209	1 page e-mail from Joanne Monahan, Esq. (IHC) to Brian O'Reilly (JC) and William Matsikoudis, Esq., (IHC) with copy to Barbara Netchert (JC) dated 11/13/2006 1:43 PM, Re: Sixth St Embankment; 319.9405	E-mail from Joanne Monahan, Esq., to Brian O'Reilly, et. als	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1210	1 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copy to Barbara Netchert (JC) dated 11/13/2006 12:45 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string attached) ²⁹	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1215	2 page e-mail from Douglas Greenfield (JC) to Greg Corrado (JC) with copies to Barbara Netchert (JC), and Robert Cotter (JC)	E-mail from Douglas Greenfield to Greg Corrado	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

²⁹ E-mail from Charles Montange to John Curley dated 10/10/2006 2:44 PM, Re: funding.

	dated 10/16/2006 2:30 PM, Re: Embankment Maps (with e-mail string attached) ³⁰			
1217	2 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Barbara Netchert (JC) and Jacqueline Middleton (OC) dated 10/5/2006 12:28 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string attached) ³¹	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1225	1 page e-mail from Barbara Netchert (JC) to Brian O'Reilly (JC) with copy to Joanne Monahan, Esq. (IHC) dated 10/5/2006 3:30 PM, Re: Sixth St Embankment; 319.9405	E-mail from Barbara Netchert to Brian O'Reilly	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1226	2 page e-mail from John Curley, Esq., (OC) to Joanne	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged

³⁰ E-mail from Maureen Crowley to Douglas Greenfield dated 10/16/2006 1:58 PM.

³¹ E-mail from Charles Montange to John Curley dated 10/4/2006 2:05 PM, Re: Harsimus.

	Monahan, Esq. (IHC) with copies to Barbara Netchert (JC) and Jacqueline Middleton (OC) dated 10/5/2006 12:28 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string attached) ³²			material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1228	1 page e-mail from Barbara Netchert (JC) to Douglas Greenfield (JC), attaching 3 page draft letter, dated 5/26/2006 8:17 AM, Re: Sixth Street Embankment	E-mail from Barbara Netchert to Douglas Greenfield	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1232	1 page e-mail from Barbara Netchert (JC) to Joanne Monahan, Esq. (IHC) dated 5/19/2006 3:05 PM, Re: embankment appeal (with e-mail string attached) ³³	E-mail from Barbara Netchert to Joanne Monahan, Esq.	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1233	1 page e-mail from Joanne Monahan, Esq., (IHC) to	E-mail from Joanne Monahan, Esq., to Barbara Netchert	Attorney client privilege	Exempt from disclosure as attorney client privileged

³² E-mail from Charles Montange to John Curley dated 10/4/2006 2:05 PM, Re: Harsimus.

³³ E-mail from Joanne Monahan to Barbara Netchert dated 5/19/2006 3:00 PM; E-mail from Claire Davis to Barbara Netchert dated 5/19/2006 1:36 PM.

	Barbara Netchert (JC) dated 5/19/2006 3:01 PM, Re: embankment appeal (with e-mail string attached) ³⁴			material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1234	1 page e-mail from Claire Davis (JC) to Barbara Netchert (JC) with copy to Joanne Monahan, Esq. (IHC) dated 5/19/2006 1:36 PM, Re: embankment appeal	E-mail from Claire Davis to Barbara Netchert	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1239	1 page e-mail from Joanne Monahan, Esq. (IHC) to Barbara Netchert (JC), John Curley (OC) and Maryann Bucci-Carter (JC) with copy to Douglas Greenfield (JC) dated 2/28/2006 11:21 AM, Re: Embankment Zoning (with e-mail string attached) ³⁵	E-mail from Joanne Monahan, Esq., to Barbara Netchert	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

³⁴ E-mail from Claire Davis to Barbara Netchert dated 5/19/2006 1:36 PM.

³⁵ E-mail from Maryann Bucci-Carter to Joanne Monahan, Barbara Netchert and John Curley dated 2/28/2006 11:01 AM.

1244	1 page e-mail from Jennifer Bogdanski, Esq., (OC) to Christopher Fiore (JC) with copy to Barbara Netchert (JC) dated 2/17/2006 1:05 PM, Re: 6 th Street Embankment cont.	E-mail from Jennifer Bogdanski, Esq., to Christopher Fiore	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1245	1 page e-mail from Jennifer Bogdanski, Esq., (OC) to Christopher Fiore (JC) with copy to Barbara Netchert (JC) dated 2/17/2006 12:38 PM, Re: 6 th Street Embankment/ Conrail/Hyman	E-mail from Jennifer Bogdanski, Esq., to Christopher Fiore	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1255	1 page e-mail from John Curley, Esq., (OC) to Barbara Netchert (JC) dated 3/9/2005 7:42 PM, Re: 6 th Street Embankment Action Items (with e-mail string attached) ³⁶	E-mail from John Curley, Esq., to Barbara Netchert	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1258	1 page e-mail from Barbara	E-mail from Barbara Netchert	ACD	Exempt from disclosure as ACD

³⁶ E-mail from Barbara Netchert to Brian O'Reilly, Ed Toloza and Greg Corrado dated 3/9/2005 4:47 PM, Re: 6th Street Embankment Action Items.

	Netchert (JC) to Kristin Russell (JC) dated 2/22/2006 9:47 AM, Re: Embankment (with e-mail string attached) ³⁷	to Kristin Russell		material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1259	1 page e-mail from Barbara Netchert (JC) to Kristin Russell (JC) dated 2/22/2006 8:55 AM, Re: Embankment (with e-mail string attached) ³⁸	E-mail from Barbara Netchert to Kristin Russell	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1260	1 page e-mail from Jennifer Bogdanski, Esq., (OC) to Christopher Fiore (JC) with copy to Barbara Netchert (JC) dated 2/17/2006 12:38 PM, Re: 6 th Street Embankment/Conrail/Hyman	E-mail from Jennifer Bogdanski, Esq., to Christopher Fiore	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2018	2 page letter from Michele Donato, Esq., to Joanne Monahan, Esq. (IHC) dated	Letter from Michele Donato, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-</u>

³⁷ E-mail from Kristin Russell to Barbara Netchert dated 2/22/2006 9:03 AM; E-mail from Barbara Netchert to Kristin Russell dated 2/22/2006 8:55 AM; E-mail from Kristin Russell to Barbara Netchert dated 2/17/2006 2:35 PM.

³⁸ E-mail from Kristin Russell to Barbara Netchert dated 2/17/2006 2:35 PM.

	9/30/2005, Re: 212 Marin Boulevard, LLC et al. v. City of Jersey City, et al, with handwritten notes			1.1.
2258	3 page letter from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC), Carmine Scarpa (IHC) and Charles Montange (OC) dated 1/18/2006, Re: Sixth Street Embankment	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
2264	2 page letter from John Curley, Esq., (OC) to Charles Montange, Esq. (OC) with copy to Joanne Monahan (IHC) dated 12/16/2005, Re: 6 th Street Embankment	Letter from John Curley, Esq., to Charles Montange, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
2269	1 page memo from William Matsikoudis Esq., (IHC) to Joanne Monahan, Esq. (IHC) with copy to Carl	Memo from William Matsikoudis, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-</u>

	Czaplicki (JC), Mariano Vega (JC) and Brian O'Reilly (JC) dated 1/9/2006, Re: 6 th Street Embankment			1.1.
2270	8 page letter from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Carmine Scarpa (IHC), Robert Cotter (JC) and Dan Wrieden (JC) dated 1/3/2006, Re: Sixth Street Embankment	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2306	1 page e-mail from Carmine Scarpa, Esq., (IHC) to Joanne Monahan, Esq., (IHC), Tom Fodice and William Matsikoudis (IHC) dated 12/20/2005 3:16 PM, Re: three again	E-mail from Carmine Scarpa, Esq., to Joanne Monahan, Esq., et. als	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> . as draft document contained therein.
2307	1 page letter from Jennifer Bogdanski, Esq., (OC) to Charles Montange, Esq. (OC) with copy to Joanne Monahan (IHC) dated	Letter from Jennifer Bogdanski, Esq., to Charles Montange, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	12/8/2005, Re: 6 th Street Embankment			
2308	1 page letter from Jennifer Bogdanski, Esq., (OC) to Charles Montange, Esq. (OC) with copy to Joanne Monahan (IHC) dated 12/6/2005, Re: 6 th Street embankment	Letter from Jennifer Bogdanski, Esq., to Charles Montange, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2310	1 page letter from Jacqueline Middleton, Esq. (OC) to Bill Delaney ³⁹ with copy to Joanne Monahan (IHC) and Gregory Corrado (JC) dated 11/16/2005, Re: Sixth Street Embankment	Letter from Jacqueline Middleton, Esq., to Bill Delaney	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2314	2 page memo from William Matsikoudis, Esq., (IHC) to Carmine Scarpa, Esq. (IHC) dated 11/30/2005, Re: Procedures for Nominating and Designating Local Landmarks and Districts	Memo from William Matsikoudis, Esq., to Carmine Scarpa, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

³⁹ Dresdner Robin consultant.

2336	2 page letter from Jacqueline Middleton, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Benjamin Delisle (RA), Tyshammie Cooper (JC) and Betty dated 9/14/2005, Re: Sixth Street Embankment Project	Letter from Jacqueline Middleton, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2338	2 page e-mail from Joanne Monahan, Esq. (IHC) to Hjordys Espinal (JC) Kearns dated 9/20/2005 6:14 PM, Re: Montange)with e-mail string attached) ⁴⁰	E-mail from Joanne Monahan, Esq., to Hjordys Espinal	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2344	1 page fax from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) dated 9/6/2005, Re: 6 th Street Embankment	Fax from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2393	2 page letter from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-</u>

⁴⁰ E-mail from William Matsikoudis to Joanne Monahan dated 9/20/2005 5:36 PM; E-mail from Maureen Crowley to Joanne Monahan dated 9/19/2005 1:55 PM.

	copy to Maureen Crowley (Co-Petitioner) dated 2/23/2005, Re: 6 th Street Embankment			1.1.
2397	1 page memo from Joanne Monahan, Esq., (IHC) to Barbara Netchert (JC) dated 2/22/2006, Re: 6 th Street Embankment Project – Surface Transportation Board	Memo from Joanne Monahan, Esq., to Barbara Netchert	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2398	2 page letter from Charles Montange, Esq., (OC) to John Curley, Esq. (OC), Joanne Monahan (IHC), Andrea Ferster and Maureen Crowley, Co-Petitioner, dated 2/21/2006	Letter from Charles Montange, Esq., to John Curley, Esq., et als	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2412	9 page letter from John Curley, Esq., (OC) to Joanne Monahan Esq. (IHC) with copies to Carmine Scarpa (IHC), Robert	Letter from John Curley, Esq., to Joanne Monahan Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	Cotter (JC) and Dan Wrieden (JC) dated 2/7/2006, Re; Sixth Street Embankment			
2423	8 page letter from John Curley, Esq., (OC) to Joanne Monahan Esq. (IHC) with copies to Carmine Scarpa (IHC), Robert Cotter (JC) and Dan Wrieden (JC) dated 1/3/2006, Re: Sixth Street Embankment	Letter from John Curley Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2462	1 page e-mail from Maureen Crowley, Co-Petitioner with Jersey City, to Charles Montange, Esq. (OC) dated 4/25/2006 11:53 PM, Re: STB proceeding; Harsimus	E-mail from Maureen Crowley to Charles Montange, Esq.	Attorney client privilege; Joint defendant privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2463	17 page Draft Rebuttal Statement of Petitioners before the Surface Transportation Board, undated	Draft Rebuttal Statement of Petitioners before the Surface Transportation Board	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2507	1 page fax from Charles Montange, Esq., (OC) to	Fax from Charles Montange, Esq., to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged

	John Curley, Esq. (OC) with copy to Joanne Monahan, Esq. (IHC) dated 2/2/2006			material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2571	1 page Funding Status Chart dated 10/13/2006	Funding Status Chart	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2580	1 page e-mail Greg Corrado (JC) to Joanne Monahan, Esq. (IHC) dated 9/21/2006 2:25 PM, Re: 6 th Street Embankment (with e-mail string attached) ⁴¹	E-mail from Greg Corrado to Joanne Monahan, Esq.	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2581	1 page e-mail from Joanne Monahan, Esq. (IHC) to Greg Corrado (JC) dated 9/21/2006 1:22 PM, Re: 6 th Street Embankment (with e-mail string attached) ⁴²	E-mail from Joanne Monahan, Esq., to Greg Corrado	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2584	1 page e-mail from Joanne Monahan, Esq. (IHC) to Greg Corrado (JC) dated 9/21/2006 1:22	E-mail from Joanne Monahan to Greg Corrado	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to

⁴¹ E-mail from Joanne Monahan to Greg Corrado dated 9/21/2006 1:22 PM; E-mail from Greg Corrado to Joanne Monahan dated 9/20/2006 3:53 PM.

⁴² E-mail from Greg Corrado to Joanne Monahan dated 9/20/2006 3:53 PM.

	PM, Re: 6 th Street Embankment (with e-mail string attached) ⁴³			<u>N.J.S.A. 47:1A-1.1.</u>
2585	1 page e-mail from Greg Corrado (JC) to Joanne Monahan, Esq. (IHC) dated 9/21/2006 2:25 PM, Re: 6 th Street Embankment (with e-mail string attached) ⁴⁴	E-mail from Greg Corrado to Joanne Monahan, Esq.	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
2590	2 page Draft Resolution endorsing petition to Surface Transportation Board dated 9/8/2006, with handwritten notations.	Draft Resolution endorsing petition to Surface Transportation Board	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
2600	1 page memo from Joanne Monahan, Esq., (IHC) to John Curley, Esq. (OC) dated 9/1/2006, Re: 6 th Street Embankment	Memo from Joanne Monahan, Esq., to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
2601	3 page Draft Ordinance Chapter 345-31 dated 8/30/2006,	Draft Ordinance Chapter 345-31	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

⁴³ E-mail from Greg Corrado to Joanne Monahan dated 9/20/2006 3:53 PM.

⁴⁴ E-mail from Joanne Monahan to Greg Corrado dated 9/21/2006 1:22 PM; E-mail from Greg Corrado to Joanne Monahan dated 9/20/2006 3:53 PM.

	stamped "draft."			
2604	4 page Draft Ordinance Chapter 345-31 dated 11/22/2005, with handwritten notations.	Draft Ordinance Chapter 345-31	ACD	Disclose ordinance in its entirety. This record is not a draft document because the voting record is included, as well as the dates of the first reading (11/22/2005) and the second reading (1/11/2006); both of these dates occurred prior to the date of the Complainant's request.
2610	3 page letter from John Curley, Esq., (OC) to Mariano Vega, Jr. (JC) with copy to William Matsikoudis, Esq. (IHC) dated 1/11/2006, Re: Proposed Ordinance 05-170	Letter from John Curley, Esq., to Mariano Vega, Jr.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2617	4 page letter from John Curley, Esq., (OC) to William Matsikoudis, Esq. (IHC) with copies to Robert Cotter (JC), (Dan Wrieden (JC),	Letter from John Curley, Esq., to William Matsikoudis, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	Claire Davis (JC), Joanne Monahan, Esq. (IHC) and Carmine Scarpa (IHC) dated 8/23/2006, Re: Sixth Street Embankment			
2626	1 page letter from John Curley, Esq., (OC) to Hugh McGuire, McGuire Associates, and Paul Beisser, Value Research Group, dated 8/22/2006, Sixth Street Embankment	Letter from John Curley, Esq., to Hugh McGuire, et als	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2643	2 page letter from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC) and Dan Wrieden (JC) dated 7/28/2006, Re: Sixth Street Embankment	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2647	2 page letter from John Curley, Esq., (OC) to Hugh McGuire, McGuire Associates, dated 7/26/2006, Re: Sixth Street Embankment	Letter from John Curley, Esq., to Hugh McGuire	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

2649	1 page memo from Joanne Monahan, Esq., (IHC) to Carmine Scarpa, Esq. (IHC) with copies to Joanne Monahan, Esq. (IHC) and Greg Corrado (JC) dated 12/23/2005, Re: 6 th Street Embankment Project	Memo from Joanne Monahan, Esq., to Carmine Scarpa, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2716	1 page e-mail from Maureen Crowley (Co-Petitioner STB Application) to Joanne Monahan, Esq. (IHC) dated 12/23/2005 3:19 PM, Re: JC Embankment	E-mail from Maureen Crowley to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2845	6 page Report and resume from Andrew Strauss, Planning Consultant, to Maureen Crowley dated 11/17/2004	Report and resume from Andrew Strauss to Maureen Crowley	Attorney client privilege	Disclose resume in its entirety. The four page report is exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2969	2 page letter from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) dated 9/6/2005, Re: 6 th Street	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	Embankment Project			
2974	1 page Agenda list with notes, from Embankment Preservation Coalition meeting dated 9/6/2005	Agenda list with notes, from Embankment Preservation Coalition meeting	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3039	1 page e-mail from Joanne Monahan, Esq. (IHC) to David Donnelly (JC) and Robert Cotter (JC) dated 8/29/2005 Re: Embankment Meeting Request	E-mail from Joanne Monahan, Esq., to David Donnelly, et als	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3040	1 page e-mail from Joanne Monahan, Esq. (IHC) to Robert Cotter (JC) with copies to Barbara Netchert (JC) and William Matsikoudis, Esq. (IHC), undated	E-mail from Joanne Monahan, Esq., to Robert Cotter	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3047	2 page e-mail from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) with copy to David Donnelly (JC) dated 8/19/2005 9:17 AM, Re:	E-mail from Maureen Crowley to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	Embankment - PRIVILEGED			
3078	2 page letter from Maureen Crowley (Co-Petitioner) to Jerramiah Healy (JC) with copy to David Donnelly (JC) dated 7/25/2005 Re: PRR Harsimus Stem Embankment	Letter from Maureen Crowley to Jerramiah Healy	Attorney client privilege	Disclose letter in its entirety. Attorney client privilege does not apply to this letter between defendants, one of whom is a public official. Moreover, ACD privilege does not apply to this letter because it is not an inter- or intra-governmental communication.
3104	2 page letter from John Curley, Esq. (OC) to John Fiorilla, Esq. with copy to Joanne Monahan, Esq. (IHC) dated 6/7/2005, Re: 6 th Street Embankment Project	Letter from John Curley, Esq., to John Fiorilla, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3106	1 page memorandum from Carmine Scarpa, Esq. (IHC) to Joanne Monahan, Esq. (IHC) dated June 6, 2005, Re: 6 th Street Embankment Project	Memorandum from Carmine Scarpa, Esq. to Joanne Monahan, Esq.	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3130	2 page e-mail from Maureen Crowley (Co-	E-mail from Maureen Crowley to Joanne	Attorney client privilege	Exempt from disclosure as attorney client

	Petitioner) to Joanne Monahan, Esq. (IHC) dated 5/2/2005 12:30 AM, Re: Draft Questions for Consulting Attorney on Abandonment	Monahan, Esq.		privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3132	3 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) dated 4/4/2005 5:35 PM, Re: Embankment (with e-mail string attached) ⁴⁵	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3163	1 page e-mail from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) dated 4/5/2005 11:42 AM, Re: Embankment	E-mail from Maureen Crowley to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3165	1 page e-mail from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) with copies to Greg Corrado (JC) and Brian	E-mail from Maureen Crowley to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁴⁵ E-mail from Joanne Monahan to John Curley and Brian O'Reilly dated 4/4/2005 4:17 PM, Re: Embankment; E-mail from John Curley to Joanne Monahan dated 4/4/2006 10:00 AM; E-mail from Joanne Monahan to John Curley and Maureen Crowley dated 4/1/2005 9:51 AM, Re: Embankment; E-mail from Maureen Crowley to John Curley dated 3/31/2005 11:09 AM.

	O'Reilly (JC) dated 3/29/2005 9:17 AM, Re: Embankment Mtg Monday			
3166	1 page e-mail from Maureen Crowley (Co-Petitioner) to Robert Cotter (JC), et als with copy to Joanne Monahan, Esq. (IHC) dated 3/3/2005 12:29 PM, Re: Embankment Requests from J. Curley	E-mail from Maureen Crowley to Robert Cotter, et als	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
3167	2 page Notes of Embankment Acquisition Steering Committee dated 2/14/2005	Notes of Embankment Acquisition Steering Committee	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
3169	3 page letter from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) with copy to John Curley, Esq. (OC) dated 2/28/2004, Re: 6 th Street Embankment Project	Letter from Maureen Crowley to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
3172	2 page letter from John Curley, Esq., (OC) to Joanne Monahan, Esq.	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant

	(IHC) with copy to Maureen Crowley (Co-Petitioner) dated 2/18/2005, Re: 6 th Street Embankment			to <u>N.J.S.A. 47:1A-1.1</u> .
3184	6 page e-mail from Maureen Crowley (Co-Petitioner) to Embankment Steering Committee (JC) dated 2/10/2005 11:48 AM, Re: Embankment Acquisition Steering Committee	E-mail from Maureen Crowley to Embankment Steering Committee	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3199	1 page Memorandum from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) and John Curley, Esq. (OC) dated 2/9/2005, Re: Jersey City Embankment Acquisition Steering Committee Business	Memorandum from Maureen Crowley to Joanne Monahan, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3200	7 page fax from Joanne Monahan, Esq., (IHC) to John Curley, Esq.	Fax from Joanne Monahan, Esq., to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant

	(OC) dated 2/10/2005 attaching various e-mails and reports ⁴⁶			to <u>N.J.S.A. 47:1A-1.1.</u>
3216	6 page e-mail from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) and John Curley, Esq. (OC) dated 2/9/2005, Re: Jersey City Embankment Acquisition Steering Committee Business dated 2/9/2005 (with memorandum attached) ⁴⁷	E-mail with attachments from Maureen Crowley to Joanne Monahan, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
3222	1 page memo from Joanne Monahan, Esq., (IHC) to Brian O'Reilly (JC), with handwritten notations dated 12/22/2004, Re: 6 th Street	Memorandum from Joanne Monahan, Esq., to Brian O'Reilly, with handwritten notations	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

⁴⁶ Memorandum from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) and John Curley, Esq. (OC) dated 2/9/2005, Re: Jersey City Embankment Acquisition Steering Committee Business; Memorandum from Andy Strauss, Strauss and Associates, to Maureen Crowley dated 11/17/2004, Re: Abandonment Docket Review/Harismus Branch.

⁴⁷ Memorandum from Andy Strauss, Strauss and Associates, to Maureen Crowley dated November 17, 2004, Re: Abandonment Docket Review/Harismus Branch.

	Embankment			
3224 ⁴⁸	1 page memo from Joanne Monahan, Esq., (IHC) to Brian O'Reilly (JC) dated 12/22/2004 Re: 6 th Street Embankment	Memorandum from Joanne Monahan, Esq., to Brian O'Reilly	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3228	11 page Memorandum from Andrew Strauss, Strauss and Associates, to Maureen Crowley (Co-Petitioner) dated November 17, 2004, Re: Abandonment Docket Review/Harism us Branch.	Memorandum from Andrew Strauss to Maureen Crowley	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3241	2 page letter from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) dated 9/20/2004, Re: 6 th Street Embankment	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3243	2 page letter from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) dated 9/20/2004, Re: 6 th Street Embankment	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁴⁸ This record is the memorandum referred to at item no. 3222 above, without the handwritten notations.

3246	1 page letter from Joanne Monahan, Esq. (IHC) to John Curley, Esq. (OC) with copy to Robert Cotter (JC) dated 9/17/2004, Re: 6 th Street Embankment Projects	Letter from Joanne Monahan, Esq., to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
3253	2 page letter from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) dated 9/20/2004, Re: 6 th Street Embankment	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
3283	1 page e-mail from Alexander Booth, Esq., (IHC) to Joanne Monahan, Esq. (IHC) dated 11/13/2002 9:38 PM, Re: 6 th St.	E-mail from Alexander Booth, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
3287	1 page agenda list for November 12 meeting with McGuire & Associates	Agenda list for meeting with McGuire & Associates	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
3288	1 page memo from Joanne Monahan, Esq. (IHC) to Donovan Bezer (JC) dated 11/3/2003, Re: Rail Lines	Memo from Joanne Monahan, Esq., to Donovan Bezer	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

	(Harsimus-Contrail) 6 th Street Embankment			
3289	1 page letter from Mark Munley (JC) to Alexander Booth, Esq. (IHC) with copy to Robert Cotter (JC) dated 6/3/2003, Re: Harsimus Railroad Embankment	Letter from Mark Munley to Alexander Booth, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4004	2 page e-mail from John Curley, Esq. (OC) to Charles Montange, Esq. (OC) and Joanne Monahan, Esq. (IHC) with copy to Jennifer Bogdanski, Esq. (OC) dated 1/13/2006 9:12 PM, Re: Sixth St. Embankment (with e-mail string attached) ⁴⁹	E-mail from John Curley, Esq., to Charles Montange, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4006	1 page e-mail from John Curley, Esq. (OC) to Maureen Crowley (Co-Petitioner) with	E-mail from John Curley, Esq. to Maureen Crowley	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁴⁹ E-mail from Charles Montange to John Curley, Joanne Monahan and Maureen Crowley dated 1/13/2006 4:58 PM, Re: Fritz Kahn.

	copies to Joanne Monahan, Esq. (IHC) and Jennifer Bogdanski, Esq. (OC) dated 1/7/2006 3:08 PM, Re: Sixth St Embankment (with e-mail string attached) ⁵⁰			
4007	2 page e-mail from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 7/21/2006 6:54 PM, Re: Sixth St Embankment	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4009	2 page e-mail from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) with copies to Barbara Netchert (JC) and Jacqueline Middleton (OC) dated 10/5/2006 12:28 PM, Re:	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁵⁰ E-mail from Maureen Crowley to John Curley dated 1/6/2006 5:41 PM, Re: JC Embankment.

	Sixth St Embankment (with e-mail string attached) ⁵¹			
4011	1 page e-mail from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) with copy to Barbara Netchert (JC) dated 11/13/2006 12:45 PM, Re: Sixth St Embankment (with e-mail string attached) ⁵²	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4012	2 page e-mail from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) with copies to Charles Montange (OC) and Jennifer Bogdanski (OC) dated 1/10/2006 8:57 AM, Re: Sixth St Embankment (with e-mail string attached) ⁵³	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4014	4 page e-mail from William Matsikoudis,	E-mail from William Matsikoudis,	Attorney client privilege	Exempt from disclosure as attorney client

⁵¹ E-mail from Charles Montange to John Curley dated 10/4/2006 2:05 PM, Re: Harismus.

⁵² E-mail from Charles Montange to John Curley dated 10/10/2006 2:44 PM, Re: funding.

⁵³ E-mail from Charles Montange to John Curley and Maureen Crowley dated 1/9/2006 7:39 PM, Re: Pet. to STB.

	Esq. (IHC) to John Curley, Esq. (OC) and Joanne Monahan, Esq. (IHC) with copy to Greg Corrado (JC) dated 3/1/2006 10:20 AM, Re: Sixth Street Embankment Money (with e-mail string attached) ⁵⁴	Esq., to John Curley, Esq., et als.		privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4022	1 page e-mail from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 2/13/2006 12:11 PM, Re: Sixth Street Embankment	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4023	1 page e-mail from John Curley, Esq. (OC) to Robert Cotter (JC) with copies to Joanne	E-mail from John Curley, Esq., to Robert Cotter	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁵⁴ E-mail from John Curley to Joanne Monahan dated 3/1/2006 8:58 AM; E-mail from Charles Montange to John Curley dated 2/27/2006 7:49 PM, Re: Deeds Harismus Branch; E-mail from John Curley to Charles Montange dated 2/27/2006 4:29 PM, Re: Deeds Harismus Branch; E-mail from Charles Montange to John Curley dated 2/27/2006 3:15 PM, Re: deeds, Harismus; E-mail from John Curley to Charles Montange dated 2/27/2006 12:08 PM, Re: deeds, Harismus; E-mail from Charles Montange to Maureen Crowley, John Curley, Jennifer Bogdanski, Joanne Monahan and William Matsikoudis dated 2/27/2006 11:23 PM, Re: deeds, Harismus; E-mail from Maureen Crowley to Charles Montange, John Curley, Jennifer Bogdanski, Joanne Monahan and William Matsikoudis dated 2/27/2006 9:12 AM, Re: deeds, Harismus.

	Monahan, Esq. (IHC) and Carmine Scarpa (IHC) dated 2/21/2006 6:02 PM, Re: Sixth Street Embankment			
4024	1 page e-mail dated 7/11/2006	E-mail from Chris Fiore to Joanne Monahan, Esq.	Mistakenly included in log	Not disclosable because record is not responsive to the request.
4025 ⁵⁵	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC), Maureen Crowley (Co-Petitioner) and Joanne Monahan, Esq. (IHC) dated 5/23/2006 2:03 PM, Re: SLH Properties	E-mail from Charles Montange, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4026	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC), Maureen Crowley (Co-Petitioner) and Jennifer Bogdanski, Esq. (OC) dated 3/1/2006 1:41 PM, Re: SLH Properties discovery response	E-mail from Charles Montange, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4027	1 page e-mail from William	E-mail from William	Attorney client	Exempt from disclosure as

⁵⁵ This record was supplied to the GRC by the Custodian via supplement dated 10/7/2009.

	Matsikoudis, Esq. (IHC) to John Curley, Esq. (OC) with copy to Joanne Monahan, Esq. (IHC) dated 1/19/2006 12:02 PM, Re: STB	Matsikoudis, Esq., to John Curley, Esq.	privilege	attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4028	1 page e-mail from Charles Montange, Esq. (OC) to Joanne Monahan, Esq. (IHC) and John Curley, Esq. (OC) dated 5/24/2006 12:07 PM, Re: STB	E-mail from Charles Montange, Esq. to Joanne Monahan, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4029	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC) with copy to Joanne Monahan, Esq. (IHC) dated 1/3/2006 6:55 PM, Re: STB dec action	E-mail from Charles Montange, Esq. to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4036	1 page e-mail from Charles Montange, Esq. (OC) to Joanne Monahan, Esq. (IHC) dated 5/24/2006 12:07 PM, Re: STB	E-mail from Charles Montange, Esq., to Joanne Monahan, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4037	1 page e-mail from Charles Montange, Esq. (OC) to John	E-mail from Charles Montange, Esq., to John Curley,	Attorney client privilege	Exempt from disclosure as attorney client privileged

	Curley, Esq. (OC) with copy to Joanne Monahan, Esq. (IHC) dated 1/3/2006 6:55 PM, Re: STB dec action	Esq.		material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4038	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC), Maureen Crowley (Co-Petitioner) and Joanne Monahan, Esq. (IHC) dated 2/17/2006 12:07 PM, Re: STB proceeding	E-mail from Charles Montange, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4039	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC) and Joanne Monahan, Esq. (IHC) dated 3/5/2006 2:18 AM, Re: STB proceeding, Harismus Branch, discovery	E-mail from Charles Montange, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4040	1 page e-mail from Charles Montange, Esq. (OC) to Maureen Crowley (Co-Petitioner), William	E-mail from Charles Montange, Esq., to Maureen Crowley, et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	Matsikoudis (IHC) and Joanne Monahan, Esq. (IHC) dated 4/24/2006 5:38 PM, Re: STB proceeding, Jersey City			
4041	2 page e-mail from Charles Montange, Esq. (OC) to Maureen Crowley (Co-Petitioner), John Curley, Esq. (OC) and Jennifer Bogdanski, Esq. (OC) with copies to Joanne Monahan, Esq. (IHC) and William Matsikoudis (IHC) dated 4/25/2006 10:51 PM, Re: STB proceeding, Harismus	E-mail from Charles Montange, Esq., to Maureen Crowley, et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4043	1 page e-mail from William Matsikoudis, Esq. (IHC) to John Curley, Esq. (OC) with copy to Joanne Monahan, Esq. (IHC) dated 1/19/2006 12:02 PM, Re: STB	E-mail from William Matsikoudis, Esq., to John Curley, Esq.,	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

4044	1 page e-mail from Charles Montange, Esq., (OC) to Joanne Monahan, Esq. (IHC) dated 5/24/2006 12:07 PM, Re: STB	E-mail from Charles Montange, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4045	1 page e-mail from Charles Montange, Esq., (OC) to John Curley, Esq. (OC) with copy to Joanne Monahan, Esq. (IHC) dated 1/3/2006 6:55 PM, Re: STB dec action	E-mail from Charles Montange, Esq., to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4046	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC), Maureen Crowley (Co-Petitioner) and Joanne Monahan, Esq. (IHC) dated 2/17/2006 12:07 PM, Re: STB proceeding	E-mail from Charles Montange, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4047	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC) and Joanne Monahan, Esq. (IHC) dated	E-mail from Charles Montange, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	3/5/2006 2:18 AM, Re: STB proceeding, Harismus Branch, discovery			
4048	1 page e-mail from Charles Montange, Esq. (OC) to Maureen Crowley (Co-Petitioner), William Matsikoudis (IHC) and Joanne Monahan, Esq. (IHC) dated 4/24/2006 5:38 PM, Re: STB proceeding, Jersey City	E-mail from Charles Montange, Esq. to Maureen Crowley, et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4049	2 page e-mail from Charles Montange, Esq. (OC) to Maureen Crowley (Co-Petitioner), John Curley, Esq. (OC) and Jennifer Bogdanski, Esq. (OC) with copies to Joanne Monahan, Esq. (IHC) and William Matsikoudis (IHC) dated 4/25/2006 10:51 PM, Re: STB proceeding,	E-mail from Charles Montange, Esq., to Maureen Crowley, et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	Harismus			
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Interim Order Rendered by the
Government Records Council
On The 27th Day of May, 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: June 2, 2010

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director
May 27, 2010 Council Meeting**

**Steve Hyman¹
Complainant**

GRC Complaint No. 2007-118

v.

**City of Jersey City (Hudson)²
Custodian of Records**

Records Relevant to Complaint:

1. All records identified in attached privilege log and privilege log No. 2.³
2. The McGuire Associates appraisal report for Block 247, Lot 50A.
3. The McGuire Associates appraisal report for Block 212, Lot M.
4. Council resolution(s) authorizing John Curley's legal services in the amount of \$56,901.78.
5. All resolutions, contracts and invoices for legal services performed by John Curley from June, 2006 to the date of the request.⁴
6. Invoices for Charles Montange's legal services based on two resolutions authorizing a total of \$40,000 in payments for services rendered by Charles Montange.
7. Council resolution authorizing McGuire Associates real estate appraisal services not to exceed \$25,000.
8. Council resolution authorizing Value Research Group real estate appraisal services.
9. Council resolution authorizing Verne V. Watley professional services.
10. Council resolution authorizing Burns & Fiorina, Inc., demolition services.
11. All resolutions, contracts and invoices pertaining to the railroad title search.⁵
12. All resolutions, contracts and invoices pertaining to the services performed by Dresden Robin Environmental Management, Inc.
13. All resolutions, contracts and invoices pertaining to the services performed by MATRIX Environmental & Geological Services, Inc.
14. All resolutions, contracts and invoices pertaining to the services performed by EnviroTech Research, Inc.
15. All resolutions, contracts and invoices pertaining to the services performed by GEOD Corporation.
16. All additional resolutions, contracts, invoices, proposals and other financial records pertaining to the Sixth Street Embankment that Jersey City has yet to provide.⁶

¹ Represented by Michele R. Donato, Esq. (Lavallette, NJ).

² Represented by Raymond Reddington, Esq. (Jersey City, NJ).

³ The two (2) privilege logs are documents created by Custodian's Counsel in response to the underlying OPRA request and were provided to Complainant along with some of the records responsive. These logs provide a list of exempt records and the legal reason for the record's nondisclosure pursuant to OPRA.

⁴ The Complainant notes that he was provided with records responsive to this request item for May, 2006 which are not at issue in this complaint.

⁵ The Complainant states that he was provided with various proposals for title search services but that no records were included as to which vendors were selected or what price they may have charged.

Request Made: October 25, 2006⁷
Response Made: October 26, 2006
Custodian: Robert Byrne
GRC Complaint Filed: May 15, 2007⁸

Records Submitted for *In Camera* Examination: 109 e-mails, 27 letters, 8 memos, 3 faxes, 3 reports, 1 resolution, 2 ordinances, 2 agenda lists, meeting notes, Redevelopment Plan, Rebuttal Statement, funding status chart.

Background

March 25, 2009

Government Records Council's Interim Order. At the March 25, 2009 public meeting, the Government Records Council ("Council") considered the March 18, 2009 Executive Director's Findings and Recommendations and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council therefore found that:

1. The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. Because the Custodian failed to immediately grant or deny access to the requested bills and vouchers, request additional time to respond or request clarification of the request, the Custodian has also violated N.J.S.A. 47:1A-5.e.
3. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of all records contained within the privilege logs dated March 5, 2007 and March 19, 2007 to determine the validity of the Custodian's assertion that the record constitutes attorney-client privileged or ACD material which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver⁹ to the Council in a sealed envelope nine (9) copies of the requested unredacted document (see #2 above), a document or redaction index¹⁰, as well as a legal certification from the Custodian, in**

⁶ The Complainant contends that based on the number of records not provided, other records relating to the request must exist.

⁷ A majority of the records requested in the OPRA request were provided to the Complainant by the Custodian. The records relevant to this complaint are cited specifically by the Complainant as those records to which access has been denied by the Custodian.

⁸ The GRC received the Denial of Access Complaint on said date.

⁹ 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 office by the deadline.

¹⁰ The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.

accordance with N.J. Court Rule 1:4-4, that the document provided is the document requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.

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

March 30, 2009

Council's Interim Order distributed to the parties.

April 6, 2009

Certification of the Custodian in response to the Council's Interim Order with the following attachments:

- Certification of Robert Byrne, City Clerk, City of Jersey City; and
- Nine (9) copies of the unredacted records (297 pages total); and
- Nine (9) copies of the City of Jersey City's Document Index.

The Custodian certifies that he denied access to the requested records on the advice of counsel that such records were not subject to disclosure based upon either the attorney client privilege or the advisory, consultative and deliberative exception of OPRA.

October 7, 2009

Supplement to Custodian's certification attaching one additional document for the Council's *in camera* review. The Custodian asserts that this record is exempt from disclosure based upon the attorney client privilege and/or the advisory, consultative and deliberative exception of OPRA.

Analysis

Whether the Custodian complied with the Council's March 25, 2009 Interim Order?

At its March 25, 2009 public meeting, the Council determined that because the Custodian has asserted that the requested records were lawfully denied pursuant to N.J.S.A. 47:1A-1.1 as attorney client privileged and advisory, consultative or deliberative material, the Council must determine whether the legal conclusion asserted by the Custodian is properly applied to the records at issue pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005). Therefore, the GRC must conduct an *in camera* review of the requested records to determine the validity of the Custodian's assertion that the requested records were properly denied.

The Council therefore ordered the Custodian to deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted documents, a document or redaction index, as well as a legal certification from the Custodian, 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. Such delivery was to be received by the GRC within five (5) business days from receipt of the Council's Interim Order or no later than April 7, 2009.

The Custodian provided the GRC with the requested records and the Custodian's certification reiterating that all the records are exempt from disclosure as attorney client privileged or advisory, consultative or deliberative material in compliance with the Council's March 25, 2009 Interim Order on April 6, 2009, in a timely manner. Therefore, the Custodian complied with the Council's March 25, 2009 Interim Order.

Whether the Custodian unlawfully denied the Complainant access to the records identified in attached privilege log and privilege log No. 2?

The Custodian asserts in the Statement of Information and the certification submitted in compliance with the Council's March 25, 2009 Interim Order that he lawfully denied the Complainant access to the requested records because said records are exempt from disclosure under OPRA as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1. and as material which is exempt from disclosure pursuant to the attorney client privilege. Conversely, the Complainant asserts that he was unlawfully denied access to the requested report.

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."

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... 'advisory, consultative, or deliberative' ("ACD") 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. In Re the Liquidation of Integrity Insurance Company, 165 N.J. 75, 88 (2000); In re Readoption With Amendments of Death Penalty Regulations, 182 N.J.149 (App. Div. 2004).

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). Specifically, the New Jersey Supreme Court has ruled that a record that contains or involves factual components is entitled to deliberative-process protection under the exemption in OPRA when it was used in decision-making process *and* its disclosure would reveal deliberations that occurred during that process. Education Law Center v. NJ Department of Education, 198 N.J. 274, 966 A.2d 1054, 1069 (2009). 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). The privilege and its rationale were

subsequently adopted by the federal district courts and circuit courts of appeal. United States v. Farley, 11 F.3d 1385, 1389 (7th Cir.1993).

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 In Re Liquidation of Integrity, *supra*, 165 N.J. at 84-5, the judiciary set forth the legal standard for applying the deliberative process privilege as follows:

- (1) The initial burden falls on the government agency to establish that matters are both *pre-decisional* and *deliberative*.
 - a. Pre-decisional means that the records were generated before an agency adopted or reached its decision or policy.

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

Moreover, OPRA excludes from the definition of a government record any record within 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).

The attorney-client privilege "recognizes that sound legal advice or advocacy serves public ends and that the confidentiality of communications between client and attorney constitutes an indispensable ingredient of our legal system." Matter of Grand Jury Subpoenas, 241 N.J. Super. 18, 27-8 (App.Div.1989). The attorney-client privilege protects communications between a lawyer and the client made in the course of that professional relationship, and particularly protects information which, if disclosed, would jeopardize the legal position of the client. N.J.S.A. 2A:84A-20; RPC 1.6. The New Jersey Supreme Court has observed that RPC 1.6 “expands the scope of protected information to include all information relating to the representation, regardless of the source or whether the client has requested it be kept confidential or whether disclosure of the information would be

embarrassing or detrimental to the client.” In re Advisory Opinion No. 544 of N.J. Sup. Court, 103 N.J. 399, 406 (1986).

Redaction of otherwise public documents is appropriate where protection of privileged or confidential subject matter is a concern. South Jersey Publishing Co., Inc. v. N. J. Expressway Authority, 124 N.J. 478, 488-9 (1991). Moreover, whether the matter contained in the requested documents pertains to pending or closed cases is important, because the need for confidentiality is greater in pending matters. Keddie v. Rutgers, State University, 148 N.J. 36, 54 (1997). Nevertheless, "[e]ven in closed cases. . . attorney work-product and documents containing legal strategies may be entitled to protection from disclosure." *Id.*

An *in camera* examination was performed on the submitted records. The results of this examination are set forth in the following table:

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian’s Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination¹¹
42	1 page e-mail from Greg Corrado, Jersey City employee (“JC”), to Douglas Greenfield (JC), dated 9/16/2006 3:24 PM, Re: 6 th Street Embankment (with e-mail	E-mail from Greg Corrado, to Douglas Greenfield	ACD	The report is exempt from disclosure in its entirety as advisory, consultative or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> because the deliberative process privilege is a doctrine that

¹¹ **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

	string attached) ¹²			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. <u>NLRB v. Sears, Roebuck & Co.</u> , 421 U.S. 132, 150, 95 S. Ct. 1504, 1516, 44 L. Ed. 2d 29, 47 (1975).
69	2 page e-mail from Douglas Greenfield (JC) to Greg Corrado (JC) dated 10/16/2006 2:30 PM, Re: Embankment Maps (with e-mail string attached) ¹³	E-mail from Douglas Greenfield to Greg Corrado	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
83	1 page e-mail from Douglas Greenfield (JC) to Greg Corrado (JC) dated 9/12/2006 11:00 AM, Re: 6 th Street Embankment	E-mail from Douglas Greenfield to Greg Corrado	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

¹² E-mail from Douglas Greenfield to Greg Corrado dated 9/12/2006 11:00 AM.

¹³ E-mail from Maureen Crowley to Douglas Greenfield dated 10/16/06 1:58 PM.

102	1 page e-mail from Douglas Greenfield (JC) to Barbara Netchert (JC) dated 5/26/2006 3:23 PM, Re: Sixth Street Embankment (with e-mail string attached) ¹⁴	E-mail from Douglas Greenfield to Barbara Netchert	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
103	1 page e-mail from Douglas Greenfield (JC) to Elena Bustamante (JC) dated 5/26/2006 1:30 PM, Re: Sixth Street Embankment (with e-mail string attached) ¹⁵	E-mail from Douglas Greenfield to Elena Bustamante	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
104	1 page e-mail from Douglas Greenfield (JC) to Barbara Netchert (JC) dated 5/26/2006 10:34 AM, Re: Sixth Street Embankment (with e-mail string attached) ¹⁶	E-mail from Douglas Greenfield to Barbara Netchert	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
105	1 page e-mail from Douglas Greenfield (JC) to Barbara Netchert (JC) dated	E-mail from Douglas Greenfield to Barbara Netchert	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

¹⁴ E-mail from Barbara Netchert to Douglas Greenfield dated 5/26/06 8:17 AM.

¹⁵ E-mail from Barbara Netchert to Douglas Greenfield dated 5/26/06 8:17 AM.

¹⁶ E-mail from Barbara Netchert to Douglas Greenfield dated 5/26/06 8:17 AM.

	5/26/2006 9:11 AM, Re: Sixth Street Embankment (with e-mail string attached) ¹⁷			
929	1 page e-mail from Barbara Netchert (JC) to Joanne Monahan, Esq., Jersey City In-House Legal Counsel (“IHC”), with copies to Robert Cotter (JC) and John Curley, Esq. (OC) dated 10/31/2006 11:33 AM, re: OPRA – Conrail Embankment (from Steve Hyman) (with e-mail string attached) ¹⁸	E-mail from Barbara Netchert to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
934	1 page e-mail from Douglas Greenfield (JC) to Greg Corrado (JC) with copies to Naomi Hsu and Robert Cotter (JC) dated 9/12/2006 11:00 AM, Re: 6 th Street Embankment	E-mail from Douglas Greenfield to Greg Corrado	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
935	2 page e-mail from Douglas Greenfield (JC)	E-mail from Douglas Greenfield to	ACD	Exempt from disclosure as ACD material pursuant

¹⁷ E-mail from Barbara Netchert to Douglas Greenfield dated 5/26/06 8:17 AM.

¹⁸ E-mail from Barbara Netchert to Melissa Sanchez dated 10/27/2006 3:40 PM.

	to Greg Corrado (JC) with copies to Barbara Netchert (JC), Jeffrey Wenger, Naomi Hsu, Robert Cotter (JC) and William Matsikoudis (IHC) dated 10/16/2006 2:30 PM, Re: Embankment Maps (with e-mail string attached) ¹⁹	Greg Corrado		to <u>N.J.S.A. 47:1A-1.1.</u>
943	1 page e-mail from Joanne Monahan, Esq. (IHC) to Barbara Netchert (JC) and Melissa Sanchez (JC) with copies to John Curley, Esq. (OC) and Robert Cotter (JC) dated 10/30/2006 8:15 PM, Re: OPRA – Conrail Embankment (from Steve Hyman) (with e-mail string attached) ²⁰	E-mail from Joanne Monahan, Esq. to Barbara Netchert, et. als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
944	1 page e-mail from John Curley, Esq., Jersey City Outside Legal Counsel	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-</u>

¹⁹ E-mail from Maureen Crowley to Douglas Greenfield dated 10/16/06 1:58 PM.

²⁰ E-mail from Barbara Netchert to Melissa Sanchez dated 10/27/2006 3:40 PM.

	<p>(“OC”) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 2/13/2006 12:11 PM, Re: Sixth Street Embankment; 319.9405</p>			1.1.
945	<p>1 page e-mail John Curley, Esq., (OC) to Robert Cotter (JC) with copies to Joanne Monahan, Esq. (IHC) and Carmine Scarpa (IHC) dated 2/21/2006 6:02 PM, Re: Sixth Street Embankment; 319.9405</p>	<p>E-mail from John Curley, Esq., to Robert Cotter</p>	<p>Attorney client privilege</p>	<p>Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u></p>
946	<p>1 page e-mail John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Carmine Scarpa (IHC), Dan Wrieden (JC) and Robert Cotter (JC) dated 6/22/2006 6:21 PM, Re: 6th Street</p>	<p>E-mail from John Curley, Esq., to Joanne Monahan, Esq.</p>	<p>Attorney client privilege</p>	<p>Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u></p>

	Embankment; 319.9405			
947	1 page e-mail John Curley, Esq., (OC) to Douglas Greenfield (JC) with copies to Joanne Monahan, Esq. (IHC) and Robert Cotter (JC) dated 9/7/2006 10:48 AM, Re: 6 th Street Embankment; 319.9405	E-mail from John Curley, Esq., to Douglas Greenfield	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-</u> 1.1.
958	1 page e-mail from Joanne Monahan, Esq. (IHC) to Barbara Netchert (JC) and Claire Davis (JC) dated 5/19/2006 3:01 PM, Re: embankment appeal (with e- mail string attached) ²¹	E-mail from Joanne Monahan, Esq. to Barbara Netchert, et. als	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-</u> 1.1.
959	1 page e-mail from Jennifer Bogdanski, Esq., (OC) to Claire Davis (JC) with copies to Joanne Monahan, Esq. (IHC) and John Curley, Esq. (OC) dated 10/25/2006	E-mail from Jennifer Bogdanski, Esq., to Claire Davis	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-</u> 1.1.

²¹ E-mail from Claire Davis to Barbara Netchert dated 5/19/2006 1:36 PM.

	1:49 PM, Re: 6 th Street Embankment – interrogatory answers			
960	2 page e-mail from Jennifer Bogdanski, Esq., (OC) to Claire Davis (JC) with copies to Joanne Monahan, Esq. (IHC) and John Curley, Esq. (OC) dated 11/29/2006 12:00 PM, Re: 6 th Street Embankment – interrogatory answers (with e-mail string attached) ²²	E-mail from Jennifer Bogdanski, Esq., to Claire Davis	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
964	12 page Draft Sixth Street Redevelopment Plan, undated	Draft Sixth Street Redevelopment Plan	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1071	1 page e-mail from Rachel Kennedy (JC) to Dan Wrieden (JC) dated 10/5/2004 5:10 PM, Re: 6 th Street Replan	E-mail from Rachel Kennedy to Dan Wrieden	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1072	1 page e-mail from Dan Wrieden (JC) to Maryann Buccicarter (JC), Robert Cotter (JC) and Rachel	E-mail from Dan Wrieden to Maryann Buccicarter, et. als	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

²² E-mail from Jennifer Bogdanski, Esq., to Claire Davis dated 10/25/2006 1:08 PM.

	Kennedy (JC) dated 10/6/2004 8:29 AM, Re: 6 th Street Replan (with e-mail string attached) ²³			
1078	1 page e-mail Rachel Kennedy (JC) to Dan Wrieden (JC) and Robert Cotter (JC) dated 12/21/2004 11:22 AM, Re: 6 th Street Embankment	E-mail from Rachel Kennedy to Dan Wrieden, et als.	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1081	1 page e-mail from Rachel Kennedy (JC) to Dan Wrieden (JC) and Robert Cotter (JC) dated 1/7/2005 10:20 AM, Re: Embankment Replan	E-mail from Rachel Kennedy to Dan Wrieden, et. Als	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1082	1 page e-mail Robert Cotter (JC) to Dan Wrieden (JC) and Rachel Kennedy (JC) dated 1/9/2005 5:30 PM, Re: Embankment Replan (with e-mail string attached) ²⁴	E-mail from Robert Cotter to Dan Wrieden, et. als	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1123	1 page e-mail Dan Wrieden (JC) to Benjamin	E-mail from Dan Wrieden to Benjamin Delisle	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-</u>

²³ E-mail from Rachel Kennedy to Dan Wrieden, Maryann Bucci-Carter and Robert Cotter dated 10/5/2004 5:10 PM.

²⁴ E-mail from Rachel Kennedy to Robert Cotter and Dan Wrieden dated 1/7/2005 10:20 AM.

	Delisle, Jersey City Redevelopment Agency employee (“RA”) dated 6/23/2005 1:10 PM, Re: Reservoir # 3 (with e-mail string attached) ²⁵			1.1
1124	1 page e-mail from Benjamin Delisle (RA) to Dan Wrieden (JC) dated 6/23/2005 2:15 PM, Re: Reservoir # 3 (with e-mail string attached) ²⁶	E-mail from Benjamin Delisle to Dan Wrieden	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1139	1 page e-mail Dan Wrieden (JC) to Tyshammie Cooper (JC) dated 9/15/2005 9:09 AM, Re: grant (with e-mail string attached) ²⁷	E-mail from Dan Wrieden to Tyshammie Cooper	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1143	1 page e-mail Cynthia Hadjiyannis, Historic Preservation Committee employee (“HP”) to Dan Wrieden (JC) dated	E-mail from Cynthia Hadjiyannis, Historic Preservation Committee, to Dan Wrieden	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

²⁵ E-mail from Benjamin Delisle to Dan Wrieden dated 6/23/2005 12:07 PM.

²⁶ E-mail from Dan Wrieden to Benjamin Delisle dated 6/23/2005 1:10 PM; E-mail from Benjamin Delisle to Dan Wrieden dated 6/23/2005 12:07 PM.

²⁷ E-mail from Tyshammie Cooper to Dan Wrieden dated 9/13/2005 2:36 PM.

	1/28/2005 12:47 PM, Re: Tomorrow's Planning Board Meeting			
1145	1 page e-mail from Cynthia Hadjiyannis (HP) to Dan Wrieden (JC) dated 11/29/2005 11:48 AM, Re: Embankment Planning Bd. Application	E-mail from Cynthia Hadjiyannis to Dan Wrieden	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-</u> 1.1.
1161	1 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 2/9/2006 4:34 PM, Re: Hyman. City of Jersey City (HPC Case); 319.9405	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-</u> 1.1
1163	1 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 2/13/2006	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-</u> 1.1.

	12:11 PM, Re: Sixth Street Embankment; 319.9405			
1164	1 page e-mail from Jennifer Bogdanski, Esq.(OC) to Joanne Monahan, Esq. (IHC) with copy to John Curley, Esq. (OC) dated 2/21/2006 9:54 AM, Re: 6 th Street Embankment – Hyman motion to stay	E-mail from Jennifer Bogdanski, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1165	1 page e-mail from Charles Montange, Esq. (OC) to Jennifer Bogdanski, Esq. (OC) and Joanne Monahan, Esq. (IHC) with copy to John Curley, Es. (OC) dated 2/21/2006 11:43 AM, Re: 6 th Street Embankment – Hyman motion to stay (with e-mail string attached) ²⁸	E-mail from Charles Montange, Esq., to Joanne Monahan, Esq., et. als	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1166	1 page e-mail from John Curley, Esq. (OC) to Robert Cotter (JC)	E-mail from John Curley, Esq., to Robert Cotter	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant

²⁸ E-mail from Jennifer Bogdanski to Joanne Monahan, et. als. dated 2/21/2006 6:48 AM.

	with copies to Joanne Monahan, Esq. (IHC) and Carmine Scarpa (IHC) dated 2/21/2006 6:021 PM, Re: Sixth Street Embankment; 319.9405			to <u>N.J.S.A. 47:1A-1.1</u>
1167	1 page e-mail from Joanne Monahan, Esq. (IHC) to Charles Montange, Esq.(OC) with copy to John Curley, Esq. (OC) dated 2/22/2006 7:32 PM, Re: 6 th Street Embankment – Hyman motion to stay (with e-mail string attached) ²⁹	E-mail from Joanne Monahan, Esq. to C. Montange, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1173	1 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Carmine Scarpa (IHC), Dan Wrieden (JC) and Robert Cotter (JC) dated 6/22/2006 6:21 PM, Re: 6 th Street Embankment –	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>

²⁹ E-mail from Jennifer Bogdanski to Joanne Monahan, et. als. dated 2/21/2006 6:48 AM.

	appeal of subdivision denial/checklist ordinance; 319.9405			
1178	1 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 7/21/2006 6:55 PM, Re: Sixth St. Embankment; 319.9405	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1179	1 page e-mail from Charles Montange, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 7/21/2006 7:36 PM, Re: Sixth St. Embankment; 319.9405 (with e-mail string attached) ³⁰	E-mail from C. Montange, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1182	1 page e-mail from John	E-mail from John Curley, Esq., to	Attorney client	Exempt from disclosure as

³⁰ E-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) dated 7/21/2006 3:52 PM, Re: Sixth St. Embankment.

	Curley, Esq., (OC) to Douglas Greenfield (JC) with copies to Joanne Monahan, Esq. (IHC) and Robert Cotter (JC) dated 9/7/2006 10:48 AM, Re: 6 th Street Embankment; 319.9405	Douglas Greenfield	privilege	attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1201	1 page e-mail from William Matsikoudis, Esq., (IHC) to Joanne Monahan, Esq., (IHC) and Brian O'Reilly (JC) with copy to Barbara Netchert (JC) dated 11/13/2006 5:06 PM, Re: Sixth Street Embankment; 319.9405 (with e-mail string attached) ³¹	E-mail from William Matsikoudis, Esq., to Joanne Monahan, Esq., et als	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1202	1 page e-mail from Joanne Monahan, Esq. (IHC) to Brian O'Reilly (JC) and William Matsikoudis, Esq., (IHC)	E-mail from Joanne Monahan, Esq., to Brian O'Reilly, et als.	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-</u>

³¹ E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 4:43 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 4:40 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 4:06 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 4:03 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 3:20 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

	with copy to Barbara Netchert (JC) dated 11/13/2006 4:43 PM, Re: Sixth Street Embankment; 319.9405 (with e-mail string attached) ³²			1.1
1203	1 page e-mail from William Matsikoudis, Esq., (IHC) to Joanne Monahan, Esq. (IHC) and Brian O'Reilly (JC) with copy to Barbara Netchert (JC) dated 11/13/2006 4:40 PM, Re: Sixth Street Embankment; 319.9405 (with e-mail string attached) ³³	E-mail from William Matsikoudis, Esq., to Joanne Monahan, Esq., et als.	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1204	1 page e-mail from Joanne Monahan, Esq. (IHC) to Brian O'Reilly (JC) and William Matsikoudis, Esq., (IHC) with copy to Barbara	E-mail from Joanne Monahan, Esq., to Brian O'Reilly, et. als	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>

³² E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 4:40 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/ 2006 4:06 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 4:03 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 3:20 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

³³ E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 4:06 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 4:03 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 3:20 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

	Netchert (JC) dated 11/13/2006 4:07 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string attached) ³⁴			
1205	1 page e-mail from William Matsikoudis, Esq., (IHC) to Joanne Monahan, Esq. (IHC) and Brian O'Reilly (JC) with copy to Barbara Netchert (JC) dated 11/13/2006 4:03 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string attached) ³⁵	E-mail from William Matsikoudis, Esq., to Joanne Monahan, Esq., et. als	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1206	1 page e-mail from William Matsikoudis, Esq., (IHC) to Joanne Monahan, Esq. (IHC) and Brian O'Reilly (JC) with copy to Barbara Netchert (JC) dated 11/13/2006	E-mail from William Matsikoudis, Esq., to Joanne Monahan, Esq., et. als	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>

³⁴ E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 4:03 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 3:20 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

³⁵ E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 3:20 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

	3:55 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string attached) ³⁶			
1207	1 page e-mail from Joanne Monahan, Esq. (IHC) to Brian O'Reilly (JC) and William Matsikoudis, Esq., (IHC) with copy to Barbara Netchert (JC) dated 11/13/2006 3:20 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string attached) ³⁷	E-mail from Joanne Monahan, Esq., to Brian O'Reilly, et. als	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1208	1 page e-mail from William Matsikoudis, Esq., (IHC) to Joanne Monahan, Esq. (IHC) and Brian O'Reilly (JC) with copy to Barbara Netchert (JC) dated 11/13/2006 3:16 PM, Re: Sixth St Embankment; 319.9405 (with	E-mail from William Matsikoudis, Esq., to Joanne Monahan, Esq., et. als	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>

³⁶ E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 3:20 PM; E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

³⁷ E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

	e-mail string attached) ³⁸			
1209	1 page e-mail from Joanne Monahan, Esq. (IHC) to Brian O'Reilly (JC) and William Matsikoudis, Esq., (IHC) with copy to Barbara Netchert (JC) dated 11/13/2006 1:43 PM, Re: Sixth St Embankment; 319.9405	E-mail from Joanne Monahan, Esq., to Brian O'Reilly, et. als	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1210	1 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copy to Barbara Netchert (JC) dated 11/13/2006 12:45 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string attached) ³⁹	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1215	2 page e-mail from Douglas Greenfield (JC) to Greg Corrado (JC) with copies to Barbara Netchert (JC), and Robert Cotter (JC)	E-mail from Douglas Greenfield to Greg Corrado	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

³⁸ E-mail from William Matsikoudis to Joanne Monahan dated 11/13/2006 3:16 PM; E-mail from Joanne Monahan to William Matsikoudis dated 11/13/2006 1:42 PM.

³⁹ E-mail from Charles Montange to John Curley dated 10/10/2006 2:44 PM, Re: funding.

	dated 10/16/2006 2:30 PM, Re: Embankment Maps (with e-mail string attached) ⁴⁰			
1217	2 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Barbara Netchert (JC) and Jacqueline Middleton (OC) dated 10/5/2006 12:28 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string attached) ⁴¹	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u>
1225	1 page e-mail from Barbara Netchert (JC) to Brian O'Reilly (JC) with copy to Joanne Monahan, Esq. (IHC) dated 10/5/2006 3:30 PM, Re: Sixth St Embankment; 319.9405	E-mail from Barbara Netchert to Brian O'Reilly	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1226	2 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-</u>

⁴⁰ E-mail from Maureen Crowley to Douglas Greenfield dated 10/16/2006 1:58 PM.

⁴¹ E-mail from Charles Montange to John Curley dated 10/4/2006 2:05 PM, Re: Harsimus.

	copies to Barbara Netchert (JC) and Jacqueline Middleton (OC) dated 10/5/2006 12:28 PM, Re: Sixth St Embankment; 319.9405 (with e-mail string attached) ⁴²			1.1
1228	1 page e-mail from Barbara Netchert (JC) to Douglas Greenfield (JC), attaching 3 page draft letter, dated 5/26/2006 8:17 AM, Re: Sixth Street Embankment	E-mail from Barbara Netchert to Douglas Greenfield	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1232	1 page e-mail from Barbara Netchert (JC) to Joanne Monahan, Esq. (IHC) dated 5/19/2006 3:05 PM, Re: embankment appeal (with e-mail string attached) ⁴³	E-mail from Barbara Netchert to Joanne Monahan, Esq.	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1233	1 page e-mail from Joanne Monahan, Esq., (IHC) to Barbara Netchert (JC) dated 5/19/2006 3:01	E-mail from Joanne Monahan, Esq., to Barbara Netchert	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁴² E-mail from Charles Montange to John Curley dated 10/4/2006 2:05 PM, Re: Harsimus.

⁴³ E-mail from Joanne Monahan to Barbara Netchert dated 5/19/2006 3:00 PM; E-mail from Claire Davis to Barbara Netchert dated 5/19/2006 1:36 PM.

	PM, Re: embankment appeal (with e-mail string attached) ⁴⁴			
1234	1 page e-mail from Claire Davis (JC) to Barbara Netchert (JC) with copy to Joanne Monahan, Esq. (IHC) dated 5/19/2006 1:36 PM, Re: embankment appeal	E-mail from Claire Davis to Barbara Netchert	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1239	1 page e-mail from Joanne Monahan, Esq. (IHC) to Barbara Netchert (JC), John Curley (OC) and Maryann Bucci-Carter (JC) with copy to Douglas Greenfield (JC) dated 2/28/2006 11:21 AM, Re: Embankment Zoning (with e-mail string attached) ⁴⁵	E-mail from Joanne Monahan, Esq., to Barbara Netchert	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1244	1 page e-mail from Jennifer Bogdanski, Esq., (OC) to Christopher Fiore (JC) with copy to Barbara	E-mail from Jennifer Bogdanski, Esq., to Christopher Fiore	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁴⁴ E-mail from Claire Davis to Barbara Netchert dated 5/19/2006 1:36 PM.

⁴⁵ E-mail from Maryann Bucci-Carter to Joanne Monahan, Barbara Netchert and John Curley dated 2/28/2006 11:01 AM.

	Netchert (JC) dated 2/17/2006 1:05 PM, Re: 6 th Street Embankment cont.			
1245	1 page e-mail from Jennifer Bogdanski, Esq., (OC) to Christopher Fiore (JC) with copy to Barbara Netchert (JC) dated 2/17/2006 12:38 PM, Re: 6 th Street Embankment/ Conrail/Hyman	E-mail from Jennifer Bogdanski, Esq., to Christopher Fiore	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1255	1 page e-mail from John Curley, Esq., (OC) to Barbara Netchert (JC) dated 3/9/2005 7:42 PM, Re: 6 th Street Embankment Action Items (with e-mail string attached) ⁴⁶	E-mail from John Curley, Esq., to Barbara Netchert	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1258	1 page e-mail from Barbara Netchert (JC) to Kristin Russell (JC) dated 2/22/2006 9:47 AM, Re: Embankment (with e-mail	E-mail from Barbara Netchert to Kristin Russell	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁴⁶ E-mail from Barbara Netchert to Brian O'Reilly, Ed Toloza and Greg Corrado dated 3/9/2005 4:47 PM, Re: 6th Street Embankment Action Items.

	string attached) ⁴⁷			
1259	1 page e-mail from Barbara Netchert (JC) to Kristin Russell (JC) dated 2/22/2006 8:55 AM, Re: Embankment (with e-mail string attached) ⁴⁸	E-mail from Barbara Netchert to Kristin Russell	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
1260	1 page e-mail from Jennifer Bogdanski, Esq., (OC) to Christopher Fiore (JC) with copy to Barbara Netchert (JC) dated 2/17/2006 12:38 PM, Re: 6 th Street Embankment/ Conrail/Hyman	E-mail from Jennifer Bogdanski, Esq., to Christopher Fiore	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2018	2 page letter from Michele Donato, Esq., to Joanne Monahan, Esq. (IHC) dated 9/30/2005, Re: 212 Marin Boulevard, LLC et al. v. City of Jersey City, et al, with handwritten notes	Letter from Michele Donato, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2258	3 page letter from John	Letter from John Curley, Esq., to	Attorney client	Exempt from disclosure as

⁴⁷ E-mail from Kristin Russell to Barbara Netchert dated 2/22/2006 9:03 AM; E-mail from Barbara Netchert to Kristin Russell dated 2/22/2006 8:55 AM; E-mail from Kristin Russell to Barbara Netchert dated 2/17/2006 2:35 PM.

⁴⁸ E-mail from Kristin Russell to Barbara Netchert dated 2/17/2006 2:35 PM.

	Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC), Carmine Scarpa (IHC) and Charles Montange (OC) dated 1/18/2006, Re: Sixth Street Embankment	Joanne Monahan, Esq.	privilege	attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2264	2 page letter from John Curley, Esq., (OC) to Charles Montange, Esq. (OC) with copy to Joanne Monahan (IHC) dated 12/16/2005, Re: 6 th Street Embankment	Letter from John Curley, Esq., to Charles Montange, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2269	1 page memo from William Matsikoudis Esq., (IHC) to Joanne Monahan, Esq. (IHC) with copy to Carl Czaplicki (JC), Mariano Vega (JC) and Brian O'Reilly (JC) dated 1/9/2006, Re: 6 th Street Embankment	Memo from William Matsikoudis, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2270	8 page letter from John Curley, Esq., (OC) to Joanne Monahan, Esq.	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant

	(IHC) with copies to Carmine Scarpa (IHC), Robert Cotter (JC) and Dan Wrieden (JC) dated 1/3/2006, Re: Sixth Street Embankment			to <u>N.J.S.A. 47:1A-1.1</u> .
2306	1 page e-mail from Carmine Scarpa, Esq., (IHC) to Joanne Monahan, Esq., (IHC), Tom Fodice and William Matsikoudis (IHC) dated 12/20/2005 3:16 PM, Re: three again	E-mail from Carmine Scarpa, Esq., to Joanne Monahan, Esq., et. als	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> . as draft document contained therein.
2307	1 page letter from Jennifer Bogdanski, Esq., (OC) to Charles Montange, Esq. (OC) with copy to Joanne Monahan (IHC) dated 12/8/2005, Re: 6 th Street Embankment	Letter from Jennifer Bogdanski, Esq., to Charles Montange, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2308	1 page letter from Jennifer Bogdanski, Esq., (OC) to Charles Montange, Esq. (OC) with copy to Joanne Monahan (IHC) dated 12/6/2005, Re:	Letter from Jennifer Bogdanski, Esq., to Charles Montange, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	6 th Street embankment			
2310	1 page letter from Jacqueline Middleton, Esq. (OC) to Bill Delaney ⁴⁹ with copy to Joanne Monahan (IHC) and Gregory Corrado (JC) dated 11/16/2005, Re: Sixth Street Embankment	Letter from Jacqueline Middleton, Esq., to Bill Delaney	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2314	2 page memo from William Matsikoudis, Esq., (IHC) to Carmine Scarpa, Esq. (IHC) dated 11/30/2005, Re: Procedures for Nominating and Designating Local Landmarks and Districts	Memo from William Matsikoudis, Esq., to Carmine Scarpa, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2336	2 page letter from Jacqueline Middleton, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copies to Benjamin Delisle (RA), Tyshammie Cooper (JC) and Betty dated 9/14/2005, Re: Sixth Street Embankment	Letter from Jacqueline Middleton, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁴⁹ Dresdner Robin consultant.

	Project			
2338	2 page e-mail from Joanne Monahan, Esq. (IHC) to Hjordys Espinal (JC) Kearns dated 9/20/2005 6:14 PM, Re: Montange)with e-mail string attached) ⁵⁰	E-mail from Joanne Monahan, Esq., to Hjordys Espinal	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2344	1 page fax from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) dated 9/6/2005, Re: 6 th Street Embankment	Fax from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2393	2 page letter from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copy to Maureen Crowley (Co-Petitioner) dated 2/23/2005, Re: 6 th Street Embankment	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2397	1 page memo from Joanne Monahan, Esq., (IHC) to Barbara Netchert (JC) dated 2/22/2006, Re: 6 th Street	Memo from Joanne Monahan, Esq., to Barbara Netchert	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁵⁰ E-mail from William Matsikoudis to Joanne Monahan dated 9/20/2005 5:36 PM; E-mail from Maureen Crowley to Joanne Monahan dated 9/19/2005 1:55 PM.

	Embankment Project – Surface Transportation Board			
2398	2 page letter from Charles Montange, Esq., (OC) to John Curley, Esq. (OC), Joanne Monahan (IHC), Andrea Ferster and Maureen Crowley, Co-Petitioner, dated 2/21/2006	Letter from Charles Montange, Esq., to John Curley, Esq., et als	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2412	9 page letter from John Curley, Esq., (OC) to Joanne Monahan Esq. (IHC) with copies to Carmine Scarpa (IHC), Robert Cotter (JC) and Dan Wrieden (JC) dated 2/7/2006, Re; Sixth Street Embankment	Letter from John Curley, Esq., to Joanne Monahan Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2423	8 page letter from John Curley, Esq., (OC) to Joanne Monahan Esq. (IHC) with copies to Carmine Scarpa (IHC), Robert Cotter (JC) and Dan Wrieden (JC) dated 1/3/2006, Re:	Letter from John Curley Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	Sixth Street Embankment			
2462	1 page e-mail from Maureen Crowley, Co-Petitioner with Jersey City, to Charles Montange, Esq. (OC) dated 4/25/2006 11:53 PM, Re: STB proceeding; Harsimus	E-mail from Maureen Crowley to Charles Montange, Esq.	Attorney client privilege; Joint defendant privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2463	17 page Draft Rebuttal Statement of Petitioners before the Surface Transportation Board, undated	Draft Rebuttal Statement of Petitioners before the Surface Transportation Board	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2507	1 page fax from Charles Montange, Esq., (OC) to John Curley, Esq. (OC) with copy to Joanne Monahan, Esq. (IHC) dated 2/2/2006	Fax from Charles Montange, Esq., to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2571	1 page Funding Status Chart dated 10/13/2006	Funding Status Chart	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2580	1 page e-mail Greg Corrado (JC) to Joanne Monahan, Esq. (IHC) dated 9/21/2006 2:25 PM, Re: 6 th Street Embankment	E-mail from Greg Corrado to Joanne Monahan, Esq.	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	(with e-mail string attached) ⁵¹			
2581	1 page e-mail from Joanne Monahan, Esq. (IHC) to Greg Corrado (JC) dated 9/21/2006 1:22 PM, Re: 6 th Street Embankment (with e-mail string attached) ⁵²	E-mail from Joanne Monahan, Esq., to Greg Corrado	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2584	1 page e-mail from Joanne Monahan, Esq. (IHC) to Greg Corrado (JC) dated 9/21/2006 1:22 PM, Re: 6 th Street Embankment (with e-mail string attached) ⁵³	E-mail from Joanne Monahan to Greg Corrado	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2585	1 page e-mail from Greg Corrado (JC) to Joanne Monahan, Esq. (IHC) dated 9/21/2006 2:25 PM, Re: 6 th Street Embankment (with e-mail string attached) ⁵⁴	E-mail from Greg Corrado to Joanne Monahan, Esq.	ACD	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁵¹ E-mail from Joanne Monahan to Greg Corrado dated 9/21/2006 1:22 PM; E-mail from Greg Corrado to Joanne Monahan dated 9/20/2006 3:53 PM.

⁵² E-mail from Greg Corrado to Joanne Monahan dated 9/20/2006 3:53 PM.

⁵³ E-mail from Greg Corrado to Joanne Monahan dated 9/20/2006 3:53 PM.

⁵⁴ E-mail from Joanne Monahan to Greg Corrado dated 9/21/2006 1:22 PM; E-mail from Greg Corrado to Joanne Monahan dated 9/20/2006 3:53 PM.

2590	2 page Draft Resolution endorsing petition to Surface Transportation Board dated 9/8/2006, with handwritten notations.	Draft Resolution endorsing petition to Surface Transportation Board	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2600	1 page memo from Joanne Monahan, Esq., (IHC) to John Curley, Esq. (OC) dated 9/1/2006, Re: 6 th Street Embankment	Memo from Joanne Monahan, Esq., to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2601	3 page Draft Ordinance Chapter 345-31 dated 8/30/2006, stamped "draft."	Draft Ordinance Chapter 345-31	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2604	4 page Draft Ordinance Chapter 345-31 dated 11/22/2005, with handwritten notations.	Draft Ordinance Chapter 345-31	ACD	Disclose ordinance in its entirety. This record is not a draft document because the voting record is included, as well as the dates of the first reading (11/22/2005) and the second reading (1/11/2006); both of these dates occurred prior to the date of the Complainant's request.
2610	3 page letter from John Curley, Esq., (OC) to	Letter from John Curley, Esq., to Mariano Vega, Jr.	Attorney client privilege	Exempt from disclosure as attorney client privileged

	Mariano Vega, Jr. (JC) with copy to William Matsikoudis, Esq. (IHC) dated 1/11/2006, Re: Proposed Ordinance 05-170			material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2617	4 page letter from John Curley, Esq., (OC) to William Matsikoudis, Esq. (IHC) with copies to Robert Cotter (JC), (Dan Wrieden (JC), Claire Davis (JC), Joanne Monahan, Esq. (IHC) and Carmine Scarpa (IHC) dated 8/23/2006, Re: Sixth Street Embankment	Letter from John Curley, Esq., to William Matsikoudis, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2626	1 page letter John Curley, Esq., (OC) to Hugh McGuire, McGuire Associates, and Paul Beisser, Value Research Group, dated 8/22/2006, Sixth Street Embankment	Letter from John Curley, Esq., to Hugh McGuire, et als	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2643	2 page letter from John Curley, Esq., (OC) to Joanne Monahan, Esq.	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant

	(IHC) with copies to Robert Cotter (JC) and Dan Wrieden (JC) dated 7/28/2006, Re: Sixth Street Embankment			to <u>N.J.S.A. 47:1A-1.1</u> .
2647	2 page letter from John Curley, Esq., (OC) to Hugh McGuire, McGuire Associates, dated 7/26/2006, Re: Sixth Street Embankment	Letter from John Curley, Esq., to Hugh McGuire	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2649	1 page memo from Joanne Monahan, Esq., (IHC) to Carmine Scarpa, Esq. (IHC) with copies to Joanne Monahan, Esq. (IHC) and Greg Corrado (JC) dated 12/23/2005, Re: 6 th Street Embankment Project	Memo from Joanne Monahan, Esq., to Carmine Scarpa, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2716	1 page e-mail from Maureen Crowley (Co-Petitioner STB Application) to Joanne Monahan, Esq. (IHC) dated 12/23/2005 3:19 PM, Re: JC	E-mail from Maureen Crowley to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	Embankment			
2845	6 page Report and resume from Andrew Strauss, Planning Consultant, to Maureen Crowley dated 11/17/2004	Report and resume from Andrew Strauss to Maureen Crowley	Attorney client privilege	Disclose resume in its entirety. The four page report is exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2969	2 page letter from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) dated 9/6/2005, Re: 6 th Street Embankment Project	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
2974	1 page Agenda list with notes, from Embankment Preservation Coalition meeting dated 9/6/2005	Agenda list with notes, from Embankment Preservation Coalition meeting	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3039	1 page e-mail from Joanne Monahan, Esq. (IHC) to David Donnelly (JC) and Robert Cotter (JC) dated 8/29/2005 Re: Embankment Meeting Request	E-mail from Joanne Monahan, Esq., to David Donnelly, et als	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3040	1 page e-mail from Joanne Monahan, Esq. (IHC) to Robert Cotter (JC) with copies to Barbara	E-mail from Joanne Monahan, Esq., to Robert Cotter	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to

	Netchert (JC) and William Matsikoudis, Esq. (IHC), undated			<u>N.J.S.A. 47:1A-1.1.</u>
3047	2 page e-mail from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) with copy to David Donnelly (JC) dated 8/19/2005 9:17 AM, Re: Embankment - PRIVILEGED	E-mail from Maureen Crowley to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
3078	2 page letter from Maureen Crowley (Co-Petitioner) to Jerramiah Healy (JC) with copy to David Donnelly (JC) dated 7/25/2005 Re: PRR Harsimus Stem Embankment	Letter from Maureen Crowley to Jerramiah Healy	Attorney client privilege	Disclose letter in its entirety. Attorney client privilege does not apply to this letter between defendants, one of whom is a public official. Moreover, ACD privilege does not apply to this letter because it is not an inter- or intra-governmental communication.
3104	2 page letter from John Curley, Esq. (OC) to John Fiorilla, Esq. with copy to Joanne Monahan, Esq. (IHC) dated 6/7/2005, Re: 6 th Street Embankment Project	Letter from John Curley, Esq., to John Fiorilla, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

3106	1 page memorandum from Carmine Scarpa, Esq. (IHC) to Joanne Monahan, Esq. (IHC) dated June 6, 2005, Re: 6 th Street Embankment Project	Memorandum from Carmine Scarpa, Esq. to Joanne Monahan, Esq.	ACD	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3130	2 page e-mail from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) dated 5/2/2005 12:30 AM, Re: Draft Questions for Consulting Attorney on Abandonment	E-mail from Maureen Crowley to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3132	3 page e-mail from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) dated 4/4/2005 5:35 PM, Re: Embankment (with e-mail string attached) ⁵⁵	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3163	1 page e-mail from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) dated	E-mail from Maureen Crowley to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to

⁵⁵ E-mail from Joanne Monahan to John Curley and Brian O'Reilly dated 4/4/2005 4:17 PM, Re: Embankment; E-mail from John Curley to Joanne Monahan dated 4/4/2006 10:00 AM; E-mail from Joanne Monahan to John Curley and Maureen Crowley dated 4/1/2005 9:51 AM, Re: Embankment; E-mail from Maureen Crowley to John Curley dated 3/31/2005 11:09 AM.

	4/5/2005 11:42 AM, Re: Embankment			<u>N.J.S.A. 47:1A-1.1.</u>
3165	1 page e-mail from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) with copies to Greg Corrado (JC) and Brian O'Reilly (JC) dated 3/29/2005 9:17 AM, Re: Embankment Mtg Monday	E-mail from Maureen Crowley to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
3166	1 page e-mail from Maureen Crowley (Co-Petitioner) to Robert Cotter (JC), et als with copy to Joanne Monahan, Esq. (IHC) dated 3/3/2005 12:29 PM, Re: Embankment Requests from J. Curley	E-mail from Maureen Crowley to Robert Cotter, et als	Attorney client privilege	Exempt from disclosure as attorney client privileged material and as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
3167	2 page Notes of Embankment Acquisition Steering Committee dated 2/14/2005	Notes of Embankment Acquisition Steering Committee	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
3169	3 page letter from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) with copy to John	Letter from Maureen Crowley to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

	Curley, Esq. (OC) dated 2/28/2004, Re: 6 th Street Embankment Project			
3172	2 page letter from John Curley, Esq., (OC) to Joanne Monahan, Esq. (IHC) with copy to Maureen Crowley (Co-Petitioner) dated 2/18/2005, Re: 6 th Street Embankment	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3184	6 page e-mail from Maureen Crowley (Co-Petitioner) to Embankment Steering Committee (JC) dated 2/10/2005 11:48 AM, Re: Embankment Acquisition Steering Committee	E-mail from Maureen Crowley to Embankment Steering Committee	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3199	1 page Memorandum from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) and John Curley, Esq. (OC) dated 2/9/2005, Re: Jersey City Embankment Acquisition	Memorandum from Maureen Crowley to Joanne Monahan, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	Steering Committee Business			
3200	7 page fax from Joanne Monahan, Esq., (IHC) to John Curley, Esq. (OC) dated 2/10/2005 attaching various e-mails and reports ⁵⁶	Fax from Joanne Monahan, Esq., to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3216	6 page e-mail from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) and John Curley, Esq. (OC) dated 2/9/2005, Re: Jersey City Embankment Acquisition Steering Committee Business dated 2/9/2005 (with memorandum attached) ⁵⁷	E-mail with attachments from Maureen Crowley to Joanne Monahan, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3222	1 page memo from Joanne Monahan, Esq., (IHC) to Brian O'Reilly (JC), with handwritten notations dated 12/22/2004, Re: 6 th Street	Memorandum from Joanne Monahan, Esq., to Brian O'Reilly, with handwritten notations	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁵⁶ Memorandum from Maureen Crowley (Co-Petitioner) to Joanne Monahan, Esq. (IHC) and John Curley, Esq. (OC) dated 2/9/2005, Re: Jersey City Embankment Acquisition Steering Committee Business; Memorandum from Andy Strauss, Strauss and Associates, to Maureen Crowley dated 11/17/2004, Re: Abandonment Docket Review/Harismus Branch.

⁵⁷ Memorandum from Andy Strauss, Strauss and Associates, to Maureen Crowley dated November 17, 2004, Re: Abandonment Docket Review/Harismus Branch.

	Embankment			
3224 ⁵⁸	1 page memo from Joanne Monahan, Esq., (IHC) to Brian O'Reilly (JC) dated 12/22/2004 Re: 6 th Street Embankment	Memorandum from Joanne Monahan, Esq., to Brian O'Reilly	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3228	11 page Memorandum from Andrew Strauss, Strauss and Associates, to Maureen Crowley (Co-Petitioner) dated November 17, 2004, Re: Abandonment Docket Review/Harism us Branch.	Memorandum from Andrew Strauss to Maureen Crowley	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3241	2 page letter from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) dated 9/20/2004, Re: 6 th Street Embankment	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3243	2 page letter from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) dated 9/20/2004, Re: 6 th Street Embankment	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3246	1 page letter from Joanne	Letter from Joanne Monahan,	Attorney client	Exempt from disclosure as

⁵⁸ This record is the memorandum referred to at item no. 3222 above, without the handwritten notations. Steven Hyman v. City of Jersey City (Hudson), 2007-118 – *In Camera* Findings and Recommendations of the Executive Director

	Monahan, Esq. (IHC) to John Curley, Esq. (OC) with copy to Robert Cotter (JC) dated 9/17/2004, Re: 6 th Street Embankment Projects	Esq., to John Curley, Esq.	privilege	attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3253	2 page letter from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) dated 9/20/2004, Re: 6 th Street Embankment	Letter from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3283	1 page e-mail from Alexander Booth, Esq., (IHC) to Joanne Monahan, Esq. (IHC) dated 11/13/2002 9:38 PM, Re: 6 th St.	E-mail from Alexander Booth, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3287	1 page agenda list for November 12 meeting with McGuire & Associates	Agenda list for meeting with McGuire & Associates	Attorney client privilege	Exempt from disclosure as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
3288	1 page memo from Joanne Monahan, Esq. (IHC) to Donovan Bezer (JC) dated 11/3/2003, Re: Rail Lines (Harsimus-Conrail) 6 th Street Embankment	Memo from Joanne Monahan, Esq., to Donovan Bezer	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

3289	1 page letter from Mark Munley (JC) to Alexander Booth, Esq. (IHC) with copy to Robert Cotter (JC) dated 6/3/2003, Re: Harsimus Railroad Embankment	Letter from Mark Munley to Alexander Booth, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4004	2 page e-mail from John Curley, Esq. (OC) to Charles Montange, Esq. (OC) and Joanne Monahan, Esq. (IHC) with copy to Jennifer Bogdanski, Esq. (OC) dated 1/13/2006 9:12 PM, Re: Sixth St. Embankment (with e-mail string attached) ⁵⁹	E-mail from John Curley, Esq., to Charles Montange, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4006	1 page e-mail from John Curley, Esq. (OC) to Maureen Crowley (Co-Petitioner) with copies to Joanne Monahan, Esq. (IHC) and Jennifer Bogdanski,	E-mail from John Curley, Esq. to Maureen Crowley	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁵⁹ E-mail from Charles Montange to John Curley, Joanne Monahan and Maureen Crowley dated 1/13/2006 4:58 PM, Re: Fritz Kahn.

	Esq. (OC) dated 1/7/2006 3:08 PM, Re: Sixth St Embankment (with e-mail string attached) ⁶⁰			
4007	2 page e-mail from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 7/21/2006 6:54 PM, Re: Sixth St Embankment	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4009	2 page e-mail from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) with copies to Barbara Netchert (JC) and Jacqueline Middleton (OC) dated 10/5/2006 12:28 PM, Re: Sixth St Embankment (with e-mail string attached) ⁶¹	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4011	1 page e-mail from John Curley, Esq.	E-mail from John Curley, Esq., to Joanne Monahan,	Attorney client privilege	Exempt from disclosure as attorney client

⁶⁰ E-mail from Maureen Crowley to John Curley dated 1/6/2006 5:41 PM, Re: JC Embankment.

⁶¹ E-mail from Charles Montange to John Curley dated 10/4/2006 2:05 PM, Re: Harismus.

	(OC) to Joanne Monahan, Esq. (IHC) with copy to Barbara Netchert (JC) dated 11/13/2006 12:45 PM, Re: Sixth St Embankment (with e-mail string attached) ⁶²	Esq.		privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4012	2 page e-mail from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) with copies to Charles Montange (OC) and Jennifer Bogdanski (OC) dated 1/10/2006 8:57 AM, Re: Sixth St Embankment (with e-mail string attached) ⁶³	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4014	4 page e-mail from William Matsikoudis, Esq. (IHC) to John Curley, Esq. (OC) and Joanne Monahan, Esq. (IHC) with copy to Greg Corrado (JC) dated 3/1/2006 10:20 AM, Re: Sixth Street	E-mail from William Matsikoudis, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

⁶² E-mail from Charles Montange to John Curley dated 10/10/2006 2:44 PM, Re: funding.

⁶³ E-mail from Charles Montange to John Curley and Maureen Crowley dated 1/9/2006 7:39 PM, Re: Pet. to STB.

	Embankment Money (with e-mail string attached) ⁶⁴			
4022	1 page e-mail from John Curley, Esq. (OC) to Joanne Monahan, Esq. (IHC) with copies to Robert Cotter (JC), Dan Wrieden (JC) and Carmine Scarpa (IHC) dated 2/13/2006 12:11 PM, Re: Sixth Street Embankment	E-mail from John Curley, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4023	1 page e-mail from John Curley, Esq. (OC) to Robert Cotter (JC) with copies to Joanne Monahan, Esq. (IHC) and Carmine Scarpa (IHC) dated 2/21/2006 6:02 PM, Re: Sixth Street Embankment	E-mail from John Curley, Esq., to Robert Cotter	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4024	1 page e-mail dated 7/11/2006	E-mail from Chris Fiore to Joanne Monahan, Esq.	Mistakenly included in log	Not disclosable because record is not responsive to the request.

⁶⁴ E-mail from John Curley to Joanne Monahan dated 3/1/2006 8:58 AM; E-mail from Charles Montange to John Curley dated 2/27/2006 7:49 PM, Re: Deeds Harismus Branch; E-mail from John Curley to Charles Montange dated 2/27/2006 4:29 PM, Re: Deeds Harismus Branch; E-mail from Charles Montange to John Curley dated 2/27/2006 3:15 PM, Re: deeds, Harismus; E-mail from John Curley to Charles Montange dated 2/27/2006 12:08 PM, Re: deeds, Harismus; E-mail from Charles Montange to Maureen Crowley, John Curley, Jennifer Bogdanski, Joanne Monahan and William Matsikoudis dated 2/27/2006 11:23 PM, Re: deeds, Harismus; E-mail from Maureen Crowley to Charles Montange, John Curley, Jennifer Bogdanski, Joanne Monahan and William Matsikoudis dated 2/27/2006 9:12 AM, Re: deeds, Harismus.

4025 ⁶⁵	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC), Maureen Crowley (Co-Petitioner) and Joanne Monahan, Esq. (IHC) dated 5/23/2006 2:03 PM, Re: SLH Properties	E-mail from Charles Montange, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4026	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC), Maureen Crowley (Co-Petitioner) and Jennifer Bogdanski, Esq. (OC) dated 3/1/2006 1:41 PM, Re: SLH Properties discovery response	E-mail from Charles Montange, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4027	1 page e-mail from William Matsikoudis, Esq. (IHC) to John Curley, Esq. (OC) with copy to Joanne Monahan, Esq. (IHC) dated 1/19/2006 12:02 PM, Re: STB	E-mail from William Matsikoudis, Esq., to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4028	1 page e-mail from Charles Montange, Esq. (OC) to Joanne	E-mail from Charles Montange, Esq. to Joanne	Attorney client privilege	Exempt from disclosure as attorney client privileged

⁶⁵ This record was supplied to the GRC by the Custodian via supplement dated 10/7/2009.

	Monahan, Esq. (IHC) and John Curley, Esq. (OC) dated 5/24/2006 12:07 PM, Re: STB	Monahan, Esq., et als.		material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4029	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC) with copy to Joanne Monahan, Esq. (IHC) dated 1/3/2006 6:55 PM, Re: STB dec action	E-mail from Charles Montange, Esq. to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4036	1 page e-mail from Charles Montange, Esq. (OC) to Joanne Monahan, Esq. (IHC) dated 5/24/2006 12:07 PM, Re: STB	E-mail from Charles Montange, Esq., to Joanne Monahan, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4037	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC) with copy to Joanne Monahan, Esq. (IHC) dated 1/3/2006 6:55 PM, Re: STB dec action	E-mail from Charles Montange, Esq., to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4038	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC), Maureen Crowley (Co-Petitioner) and	E-mail from Charles Montange, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	Joanne Monahan, Esq. (IHC) dated 2/17/2006 12:07 PM, Re: STB proceeding			
4039	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC) and Joanne Monahan, Esq. (IHC) dated 3/5/2006 2:18 AM, Re: STB proceeding, Harismus Branch, discovery	E-mail from Charles Montange, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4040	1 page e-mail from Charles Montange, Esq. (OC) to Maureen Crowley (Co-Petitioner), William Matsikoudis (IHC) and Joanne Monahan, Esq. (IHC) dated 4/24/2006 5:38 PM, Re: STB proceeding, Jersey City	E-mail from Charles Montange, Esq., to Maureen Crowley, et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4041	2 page e-mail from Charles Montange, Esq. (OC) to Maureen Crowley (Co-Petitioner), John Curley, Esq. (OC) and	E-mail from Charles Montange, Esq., to Maureen Crowley, et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	Jennifer Bogdanski, Esq. (OC) with copies to Joanne Monahan, Esq. (IHC) and William Matsikoudis (IHC) dated 4/25/2006 10:51 PM, Re: STB proceeding, Harismus			
4043	1 page e-mail from William Matsikoudis, Esq. (IHC) to John Curley, Esq. (OC) with copy to Joanne Monahan, Esq. (IHC) dated 1/19/2006 12:02 PM, Re: STB	E-mail from William Matsikoudis, Esq., to John Curley, Esq.,	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4044	1 page e-mail from Charles Montange, Esq., (OC) to Joanne Monahan, Esq. (IHC) dated 5/24/2006 12:07 PM, Re: STB	E-mail from Charles Montange, Esq., to Joanne Monahan, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .
4045	1 page e-mail from Charles Montange, Esq., (OC) to John Curley, Esq. (OC) with copy to Joanne Monahan, Esq. (IHC) dated 1/3/2006 6:55 PM, Re: STB	E-mail from Charles Montange, Esq., to John Curley, Esq.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

	dec action			
4046	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC), Maureen Crowley (Co-Petitioner) and Joanne Monahan, Esq. (IHC) dated 2/17/2006 12:07 PM, Re: STB proceeding	E-mail from Charles Montange, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
4047	1 page e-mail from Charles Montange, Esq. (OC) to John Curley, Esq. (OC) and Joanne Monahan, Esq. (IHC) dated 3/5/2006 2:18 AM, Re: STB proceeding, Harismus Branch, discovery	E-mail from Charles Montange, Esq., to John Curley, Esq., et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>
4048	1 page e-mail from Charles Montange, Esq. (OC) to Maureen Crowley (Co-Petitioner), William Matsikoudis (IHC) and Joanne Monahan, Esq. (IHC) dated 4/24/2006 5:38 PM, Re: STB proceeding,	E-mail from Charles Montange, Esq. to Maureen Crowley, et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1.</u>

	Jersey City			
4049	2 page e-mail from Charles Montange, Esq. (OC) to Maureen Crowley (Co-Petitioner), John Curley, Esq. (OC) and Jennifer Bogdanski, Esq. (OC) with copies to Joanne Monahan, Esq. (IHC) and William Matsikoudis (IHC) dated 4/25/2006 10:51 PM, Re: STB proceeding, Harismus	E-mail from Charles Montange, Esq., to Maureen Crowley, et als.	Attorney client privilege	Exempt from disclosure as attorney client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .

Whether the Complainant’s Request Item Nos. 2 through 16 are valid under OPRA?

Items No. 2 through 16 of the Complainant’s request sought appraisal reports from The McGuire Associates for two properties identified only by lot and block number, Council resolution(s) authorizing John Curley’s legal services in the amount of \$56, 901.78; “[a]ll resolutions, contracts and invoices for legal services performed by John Curley from June, 2006 to the date of the request[;]” “[i]nvoices for Charles Montange’s legal services based on two resolutions authorizing a total of \$40,000 in payments for services rendered by Charles Montange[;]” a “Council resolution authorizing McGuire Associates real estate appraisal services not to exceed \$25,000[;]” a “Council resolution authorizing Value Research Group real estate appraisal services[;]” a “Council resolution authorizing Verne V. Watley professional services[;]” a “Council resolution authorizing Burns & Fiorina, Inc., demolition services[;]” “[a]ll resolutions, contracts and invoices pertaining to the railroad title search[;]” “[a]ll resolutions, contracts and invoices pertaining to the services performed by Dresden Robin Environmental Management, Inc.[;]” “[a]ll resolutions, contracts and invoices pertaining to the services performed by MATRIX Environmental & Geological Services, Inc.[;]” “[a]ll resolutions, contracts and invoices pertaining to the services performed by EnviroTech Research, Inc.[;]” “[a]ll resolutions, contracts and invoices pertaining to the services performed by GEOD Corporation[;]” as well as “[a]ll additional resolutions, contracts, invoices, proposals and other financial records pertaining to the Sixth Street Embankment that Jersey City has yet to provide.” These requests are overly broad under

OPRA and would require the Custodian to conduct research in order to locate and identify records which may be responsive to the request.

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 Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, 546 (App. Div. 2005). As the court noted in invalidating MAG's request under OPRA:

"Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted." *Id.* at 549.

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.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),⁶⁶ the Superior Court references MAG in that the Court 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."⁶⁷

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) the court enumerated the responsibilities of a custodian and a requestor as follows:

"OPRA identifies the responsibilities of the requestor and the agency relevant to the prompt access the law is designed to provide. The custodian, who is the person designated by the director of the agency, N.J.S.A. 47:1A-1.1, must adopt forms for requests, locate and redact documents, isolate exempt documents, assess fees and means of production, identify requests that require "extraordinary expenditure of time and effort" and warrant assessment of a "service charge," and, when unable to comply with a request, "indicate the specific basis." N.J.S.A. 47:1A-5(a)-(j). The requestor must pay the costs of

⁶⁶ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

⁶⁷ As stated in Bent, *supra*.

reproduction and submit the request with information that is essential to permit the custodian to comply with its obligations. N.J.S.A. 47:1A-5(f), (g), (i). Research is not among the custodian's responsibilities." (Emphasis added), NJ Builders, 390 N.J.Super. at 177.

Moreover, the court cited MAG by stating that "...when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA..." The court also quoted N.J.S.A. 47:1A-5.g in that "[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency." The court further stated that "...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency's need to...generate new records..."

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) the Council held that "[b]ecause the Complainant's OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005)."

In the instant matter, the Complainant's requests at Item Nos. 2, 3, 4, 6, 7, 8, 9 and 10 seeking appraisal reports, resolutions and invoices pertaining to particular subject matter or authorizing the services of particular entities fail to specify with reasonable clarity identifiable government records. These requests would require the Custodian to research all appraisal reports, resolutions and invoices in his possession to locate and identify those records which may be responsive to the request. Moreover, the Complainant's requests at Item Nos. 5, 11, 12, 13, 14, 15, and 16 seek "[a]ll resolutions, contracts and invoices" pertaining to various subjects. These requests are overly broad pursuant to OPRA because they do not identify specific government records and are essentially an open-ended search of the City of Jersey City's files for the subjects sought; the Custodian would be required to conduct research throughout all of the files in his possession to locate and identify those records which may be responsive to the request. OPRA requires agencies to disclose only 'identifiable' government records not otherwise exempt; Request Item Nos. 2 through 16 of the Complainant's request are therefore invalid under OPRA.

Because the Complainant's request at Item Nos. 2, 3, 4, 6, 7, 8, 9 and 10 seeks appraisal reports, resolutions and invoices pertaining to particular subject matter or authorizing the services of particular entities and fails to specify with reasonable clarity identifiable government records, these requests would require the Custodian to research all appraisal reports, resolutions and invoices in his possession to locate and identify those records which may be responsive to the request; they are overly broad and are therefore invalid under OPRA pursuant to MAG, supra, and New Jersey Builders, supra. See also Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Because the Complainant's request at Item Nos. 5, 11, 12, 13, 14, 15, and 16 seeks "[a]ll resolutions, contracts and invoices" pertaining to various subjects and because these request items do not identify specific government records and because the Custodian would be required to conduct research throughout all of the files in his possession to locate and identify those records which may be responsive to the request, these requests are overly broad and are therefore invalid under OPRA pursuant to MAG, *supra*, and New Jersey Builders, *supra*. See also Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian provided the GRC with the requested records and the Custodian's certification reiterating that all the records are exempt from disclosure as attorney client privileged or advisory, consultative or deliberative material in compliance with the Council's March 25, 2009 Interim Order on April 6, 2009, in a timely manner. Therefore, the Custodian complied with the Council's March 25, 2009 Interim Order.
2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**

Specifically, the Custodian shall disclose the following records to the Complainant:

Record #2604 4-page ordinance Chapter 345-31 dated 11/22/2005;

Record #2845 Resume of Andrew Strauss, Planning Consultant (do not disclose 4-page report accompanying resume);

Record #3078 Letter from Maureen Crowley to Jerramiah Healy dated 7/25/2005 Re: PR Harsimus Stem Embankment.

3. Because the Complainant's request at Item Nos. 5, 11, 12, 13, 14, 15, and 16 seeks "[a]ll resolutions, contracts and invoices" pertaining to various subjects and because these request items do not identify specific government records and because the Custodian would be required to conduct research throughout all of the files in his possession to locate and identify those records which may be responsive to the request, these requests are overly broad and are therefore invalid under OPRA pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005) and New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007). See also Bent v. Stafford Police Department, 381 N.J.Super. 30

(App. Div. 2005); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Prepared By: Karyn Gordon, Esq.
In House Counsel

Approved By: Catherine Starghill, Esq.
Executive Director

May 20, 2010



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

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

INTERIM ORDER

March 25, 2009 Government Records Council Meeting

Steve Hyman
Complainant

Complaint No. 2007-118

v.

City of Jersey City (Hudson)
Custodian of Record

At the March 25, 2009 public meeting, the Government Records Council (“Council”) considered the March 18, 2009 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’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. Because the Custodian failed to immediately grant or deny access to the requested bills and vouchers, request additional time to respond or request clarification of the request, the Custodian has also violated N.J.S.A. 47:1A-5.e.
3. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of all records contained within the privilege logs dated March 5, 2007 and March 19, 2007 to determine the validity of the Custodian’s assertion that the record constitutes attorney-client privileged or advisory, consultative or deliberative material which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.



4. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted document (see No. 3 above), a document or redaction index², as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the document provided is the document requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 25th Day of March, 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
Government Records Council

Decision Distribution Date: March 30, 2009

¹ 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 office by the deadline.

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

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 25, 2009 Council Meeting**

**Steve Hyman¹
Complainant**

GRC Complaint No. 2007-118

v.

**City of Jersey City (Hudson)²
Custodian of Records**

Records Relevant to Complaint:

1. All records identified in attached privilege log and privilege log No. 2.³
2. The McGuire Associates appraisal report for Block 247, Lot 50A.
3. The McGuire Associates appraisal report for Block 212, Lot M.
4. Council resolution(s) authorizing John Curley's legal services in the amount of \$56,901.78.
5. All resolutions, contracts and invoices for legal services performed by John Curley from June, 2006 to the date of the request.⁴
6. Invoices for Charles Montange's legal services based on two resolutions authorizing a total of \$40,000 in payments for services rendered by Charles Montange.
7. Council resolution authorizing McGuire Associates real estate appraisal services not to exceed \$25,000.
8. Council resolution authorizing Value Research Group real estate appraisal services.
9. Council resolution authorizing Verne V. Watley professional services.
10. Council resolution authorizing Burns & Fiorina, Inc., demolition services.
11. All resolutions, contracts and invoices pertaining to the railroad title search.⁵
12. All resolutions, contracts and invoices pertaining to the services performed by Dresden Robin Environmental Management, Inc.
13. All resolutions, contracts and invoices pertaining to the services performed by MATRIX Environmental & Geological Services, Inc.
14. All resolutions, contracts and invoices pertaining to the services performed by EnviroTech Research, Inc.
15. All resolutions, contracts and invoices pertaining to the services performed by GEOD Corporation.

¹ Represented by Michele R. Donato, Esq. (Lavallette, NJ).

² Represented by Raymond Reddington, Esq. (Jersey City, NJ).

³ The two (2) privilege logs are documents created by Custodian's Counsel in response to the underlying OPRA request and were provided to Complainant along with some of the records responsive. These logs provide a list of exempt records and the legal reason for the record's nondisclosure pursuant to OPRA.

⁴ The Complainant notes that he was provided with records responsive to this request item for May, 2006 which are not at issue in this complaint.

⁵ The Complainant states that he was provided with various proposals for title search services but that no records were included as to which vendors were selected or what price they may have charged.

16. All additional resolutions, contracts, invoices, proposals and other financial records pertaining to the Sixth Street Embankment that Jersey City has yet to provide.⁶

Request Made: October 25, 2006⁷

Response Made: October 26, 2006

Custodian: Robert Byrne

GRC Complaint Filed: May 15, 2007⁸

Background

October 25, 2006

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in a letter stating that this request is pursuant to OPRA.

October 26, 2006

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the first (1st) business day following receipt of such request. The Custodian states that he is in receipt of the Complainant's October 25, 2006 OPRA request. The Custodian advises that the Complainant's OPRA request has been circulated to the appropriate City offices.

December 5, 2006

E-mail from the Complainant to the Custodian. The Complainant states that he is in receipt of the Custodian's October 26, 2006 acknowledgement of receipt of the Complainant's OPRA request. The Complainant further states that he has not received any records responsive to his request.

December 19, 2006

E-mail from the Complainant to the Custodian. The Complainant requests that the Custodian provide an update on the status of the Complainant's OPRA request.

December 19, 2006

E-mail from the Custodian to the Complainant attaching comments from the Custodian's Counsel.

The Custodian's Counsel states that the request will take substantial time to process unless the Complainant can be more specific about the record type and time period the Complainant seeks. The Custodian's Counsel suggests that the Complainant provide a time period for the records being requested.

⁶The Complainant contends that based on the number of records not provided, other records relating to the request must exist.

⁷A majority of the records requested in the OPRA request were provided to the Complainant by the Custodian. The records relevant to this complaint are cited specifically by the Complainant as those records to which access has been denied by the Custodian.

⁸The GRC received the Denial of Access Complaint on said date.

The Custodian's Counsel further states that part of the request contains a considerable amount of e-mails to and from eight (8) specifically named individuals as well as members of several different boards. The Custodian's Counsel states that the Custodian will estimate the volume of records involved and amount of time it will take to process the request in its current form. The Custodian's Counsel states that the Law Department will have to review and redact any records which may contain either attorney client privileged or advisory, consultative or deliberative ("ACD") material. Finally, the Custodian's Counsel states that if the Complainant does not narrow his request, the Custodian's Counsel will send a letter advising of the estimated cost to process the Complainant's request in its initial form.

January 25, 2007

Letter from the Complainant's Counsel to the Custodian. The Complainant's Counsel states that the Custodian acknowledged receipt of the Complainant's request on October 26, 2006, but failed to respond until almost sixty (60) days later. The Complainant's Counsel states that the OPRA request relevant to this complaint sought records regarding the Sixth Street Embankment project, including financial records and e-mails. The Complainant's Counsel states that in the Custodian's December 19, 2006 response to the OPRA request form, the Custodian denied access to the requested records for two reasons: attorney-client privilege and because providing records will require the Complainant to pay a special service charge. The Complainant's Counsel asserts that neither of these reasons is adequate to justify a denial of access to the requested records, nor is the fact that the Complainant's request does not specify a time frame for the records responsive.

The Complainant's Counsel states that N.J.S.A. 47:1A-5.e. provides that "immediate access ordinarily shall be granted to budgets, bills, vouchers, [and] contracts..." The Complainant's Counsel further states that financial records such as legal fees, consulting fees and other costs are standard budgetary items that must be approved by City Council. The Complainant's Counsel contends that she is surprised that the Custodian has refused to grant immediate access to these types of records, as this type of information is routinely provided to individual requestors by public entities.

The Complainant's Counsel further states that OPRA clearly states that legal bills and invoices are public records that must be provided to a requestor with redactions in the event that information protected by attorney-client privilege is contained in the bills or invoices pursuant to N.J.S.A. 47:1A-1.1. The Complainant's Counsel states that in Courier Post v. Lenape Regional High School, 360 N.J. Super. 191 (App. Div. 2002), Lenape was required by OPRA to provide invoices and itemized attorney's bills from several law firms dating over a six and a half year span.⁹

The Complainant's Counsel asserts that she recognizes the Custodian's obligation to redact any privileged information, but states that each redaction should be

⁹ The Complainant's Counsel also cites to O'Shea v. Township of West Milford, GRC Complaint No. 2004-207 (September 2005), Fisher v. Township of Fairfield (Essex), GRC Complaint No. 2002-39 (September 2003), Shain v. Township of Lakewood, GRC Complaint No. 2002-112 (February 2004) and Wicks v. Bernards Township Board of Education, GRC Complaint No. 2002-107 (February 2004) as supporting this contention.

accompanied by a general nature description of the information removed and legal justification for each exemption from disclosure. The Complainant's Counsel states that in Seibert v. Readington Township, GRC Complaint No. 2004-150 (February 2005), the GRC stated that "[u]nder OPRA the public agency bears the burden of proving that the redactions to the requested documents are authorized by law."

The Complainant's Counsel further contends that there is no basis for denying records due to the cost of preparing records for inspection. The Complainant's Counsel states that in cases where an extraordinary expenditure of time and effort is needed to provide records, an additional fee may be charged, but OPRA does not allow a Custodian to deny access to records merely because a special service charge may be warranted. The Complainant's Counsel states that in Courier Post, *supra*, Lenape was required to produce a voluminous amount of financial records despite the time and effort required. The Complainant's Counsel further states that any additional fees charged to the Complainant must meet the criteria which the GRC set forth to evaluate special service charges, found initially in Donato v. Jersey City Police Department, GRC Complaint No. 2005-251 (December 2006).

The Complainant's Counsel avers that the Custodian should not have to make extraordinary efforts to provide the requested financial records because the records are critical to a sound functioning governmental entity. The Complainant's Counsel requests that the Custodian provide immediate access to all of the records requested. The Complainant's Counsel states that any further delay or denial of access will be viewed as a knowing and willful violation of OPRA, subject to penalties prescribed by law. The Complainant's Counsel states that if the requested records are not received by February 5, 2007, a Denial of Access Complaint will be filed with the GRC.

January 31, 2007

E-mail from the Custodian to the Complainant. The Custodian requests that the Complainant extend the response deadline to February 20, 2008.

February 2, 2007

Memo from the Custodian to Jersey City officials. The Custodian states that the Complainant's Counsel has drafted a Denial of Access Complaint to be filed with the GRC. The Custodian requests that all records responsive to the Complainant's request be provided to the Custodian by February 9, 2007.

February 2, 2007

Memo from the Custodian to the Complainant attaching the memo of the same date from the Custodian to Jersey City officials. The Custodian states that the Complainant's OPRA request has been circulated to the appropriate City officials for a second and final time. The Custodian states that he is attaching the memo indicating the names of the individuals contacted.

February 6, 2007

E-mail from the Complainant to the Complainant's Counsel. The Complainant requests that the Custodian be given an extension of the deadline to respond to the Complainant's OPRA request.

February 6, 2007

Letter from the Custodian's Counsel to the Complainant's Counsel. The Custodian's Counsel states that the Custodian has forwarded the Complainant Counsel's January 25, 2007 letter to the Law Department for review. The Custodian's Counsel states that the Complainant indicated to the Custodian that an extension until February 20, 2007 would be provided. The Complainant's Counsel further states that the Custodian sent the enclosed e-mail to the Complainant and did not receive a response until the Complainant Counsel's January 25, 2007 letter.

The Custodian's Counsel states that the Complainant's request identified eight (8) tax blocks and eleven (11) lots within those tax blocks (the Sixth Street Embankment project) and requested "any and all records containing proposals, costs, invoices, charges, reimbursements or payments of any sort to the following firms or individuals, their partners, employees, consultants or contractors," without specifying a time frame for such records. The Custodian's Counsel further states that the request then identified eleven (11) individuals from or to whom correspondence was sent. The Custodian's Counsel finally states that the Complainant also requested "all documents containing direct cost, payments, invoices or charges of any sort paid by the City of Jersey City, or its agencies for: transcripts, document printing, postage, filing fees, court costs, [and] title reports" for the eleven (11) lots.¹⁰

The Custodian's Counsel states that based on the broadness and generality of the request, he does not believe that it is reasonable to expect the City to provide immediate access to the records described in the Complainant's request. The Custodian's Counsel asserts that the Custodian is collecting bills, vouchers and contracts from the various departments and divisions that may have records responsive to the Complainant's request and expects to provide these records to the Complainant next week.

The Custodian's Counsel states that the third part of the request pertains to any e-mails concerning the eleven (11) properties from, to or between eight (8) individuals listed in the request, as well as all the members of four (4) different City boards, which each contain at least nine (9) members.¹¹ The Custodian's Counsel states that this requires contacting and collecting e-mails from approximately forty-four (44) people and that the Custodian expects to collect all records responsive by February 9, 2007. The Custodian's Counsel further states that before the records can be provided to the Complainant, the Law Department must review and redact in part or in whole records which are not subject to disclosure based on attorney-client privilege or ACD material exemptions. The Custodian's Counsel states that after he is informed of how many e-mails are responsive to that portion of the Complainant's October 25, 2006 OPRA request, the Custodian's Counsel will advise the Complainant's Counsel as to whether the records responsive will be prepared for disclosure by February 20, 2007.

¹⁰ The Custodian's Counsel cites directly to the original OPRA request. This complaint is restricted to those records for which the Complainant believes access was denied.

¹¹ This language is also part of the original request.

February 6, 2007

E-mail from the Complainant's Counsel to the Complainant. The Complainant's Counsel agrees to grant the extension and informs the Complainant that she has just received a letter from the Custodian's Counsel stating that the OPRA request is invalid.

February 9, 2007

Letter from the Complainant's Counsel to the Custodian. The Complainant's Counsel states that the Complainant is willing to extend the deadline to respond to February 28, 2007. The Complainant's Counsel states that the Complainant understands that the Custodian is not responsible for maintaining the records, but asserts that the Custodian is responsible for providing such records. The Complainant acknowledges that the Custodian is attempting to be cooperative and provide records not held in the Custodian's possession.

February 27, 2007

Letter from the Custodian's Counsel to the Complainant's Counsel. The Custodian's Counsel states that the Custodian delivered 1,508 pages of records in response to the Complainant's OPRA request, which were collected from five (5) departments and divisions. The Custodian's Counsel requests an extension of the deadline to provide these records to the Complainant until March 5, 2007 in order that the Law Department may review and identify those records which cannot be disclosed in part or in whole based on attorney-client privilege or ACD exemptions.

March 2, 2007

Letter from the Custodian's Counsel to the Complainant's Counsel. The Custodian's Counsel states that the Law Department prepared a privilege log comprising an index identifying the records that are not subject to disclosure and the legal authorization for the Custodian's denial of access to each record. The Custodian's Counsel states that the Custodian will contact the Complainant on March 5, 2007 to make arrangements for the delivery of 1,172 pages of records that are being provided and the privilege log identifying the 88 pages of records that are exempt from disclosure.

The Custodian's Counsel states that 248 pages (of the 1,508 pages of records provided to the Law Department for review) do not pertain to the Complainant's OPRA request, but rather concern past legal matters between the City and the Complainant. The Custodian's Counsel states that of the 1,260 pages of records remaining, 88 pages are not subject to disclosure under OPRA because of either attorney-client privilege or ACD exemptions.

The Custodian's Counsel states that these records do not complete the City's response to the Complainant's OPRA request. The Custodian's Counsel states that because of a misunderstanding over Law Department files, the Sixth Street Embankment project file was not copied and prepared for disclosure. The Custodian's Counsel states that the Sixth Street Embankment file is estimated to contain 2,000 to 3,000 pages of records that will need to be reviewed. The Custodian's Counsel states that the records will be reviewed, a privilege log will be created and the records will be made available to the Complainant by March 9, 2007. The Custodian's Counsel states that the records to be provided will not include pleadings related to a legal complaint filed by the Complainant

in connection with the Sixth Street Embankment because the Complainant already possesses these files.

March 9, 2007

Letter from the Custodian's Counsel to the Complainant's Counsel. The Custodian's Counsel requests additional time until March 14, 2007 to complete the fulfillment of the Complainant's OPRA request. The Custodian's Counsel states that the Sixth Street Embankment file contained nearly 3,000 pages of records, a substantial portion of which are exempt from disclosure because of either attorney-client privilege or ACD material. The Custodian's Counsel states that approximately 1,500 pages must be renumbered because an employee helping with the copying made a numbering error.

March 13, 2007

Letter from the Custodian's Counsel to the Complainant's Counsel. The Custodian's Counsel states that the Law Department is in possession of 2,790 pages of records responsive to the Complainant's OPRA request. The Custodian's Counsel states that 209 pages of these records are not subject to disclosure under OPRA because of either attorney-client privilege or because they contain ACD material. The Custodian's Counsel states that a privilege log has been created and that the Custodian will contact the Complainant on March 14, 2007 to make arrangements for the delivery of the 2,581 pages of records and privilege log that is being provided in response to the Complainant's request.¹²

May 11, 2007

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

- Complainant's OPRA request dated October 25, 2006.
- E-mail from the Complainant to the Custodian dated December 5, 2006.
- E-mail from the Complainant to the Custodian dated December 19, 2006.
- E-mail from the Custodian to the Complainant dated December 19, 2006.
- Letter from the Complainant's Counsel to the Custodian dated January 25, 2007.
- E-mail from the Custodian to the Complainant dated January 31, 2007.
- Memo from the Custodian to Jersey City officials dated February 2, 2007.
- Letter from the Custodian to the Complainant dated February 2, 2007.
- E-mail from the Complainant to the Complainant's Counsel dated February 6, 2007.
- E-mail from the Complainant's Counsel to the Complainant dated February 6, 2007.
- Letter from the Custodian's Counsel to the Complainant's Counsel dated February 6, 2007.
- Letter from the Complainant's Counsel to the Custodian dated February 9, 2007.
- Letter from the Custodian's Counsel to the Complainant's Counsel dated February 27, 2007.

¹² The evidence of record is silent regarding the Custodian's actual delivery of records and the accompanying privilege logs until the filing of the Denial of Access Complaint with the GRC. Steve Hyman v. City of Jersey City (Hudson), 2007-118 – Findings and Recommendations of the Executive Director

- Letter from the Custodian’s Counsel to the Complainant’s Counsel dated March 2, 2007.
- City of Jersey privilege log dated March 5, 2007.¹³
- Letter from the Custodian’s Counsel to the Complainant’s Counsel dated March 9, 2007.
- Letter from the Custodian’s Counsel to the Complainant’s Counsel dated March 13, 2007.
- City of Jersey privilege log dated March 19, 2007.¹⁴

The Complainant’s Counsel states that the Complainant submitted an OPRA request to the Custodian on October 25, 2006 that sought financial information and other records. The Complainant’s Counsel contends that the Complainant has not received a majority of the financial records he requested.

The Complainant’s Counsel asserts that the City failed to provide records for nearly five (5) months before providing 3,962 pages of records to the Complainant. The Complainant’s Counsel contends that the City withheld 297 pages of records due to attorney-client privilege or the ACD material exemptions pursuant to N.J.S.A. 47:1A-1.1. The Complainant’s Counsel avers that the City should have redacted the protected information and disclosed the remainder of the records.

The Complainant’s Counsel states that N.J.S.A. 47:1A-5.e. provides that “immediate access ordinarily shall be granted to budgets, bills, vouchers, [and] contracts...” The Complainant’s Counsel asserts that financial records such as legal fees, consulting fees, and other standard budgetary items that must be approved by a city and its agencies are routinely maintained and provided by public agencies to requestors.

The Complainant’s Counsel further states that OPRA is very clear on the issue of attorney-client privilege in legal bills and invoices pursuant to N.J.S.A. 47:1A-1.1:

“[a] government record shall not include the following information which is deemed to be confidential...any record within the attorney-client privilege. *This paragraph 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 attorney-client privilege.*” (Emphasis added) Id.

The Complainant’s Counsel states that the New Jersey Superior Court and the GRC have upheld this provision many times, citing Courier Post v. Lenape Regional High School, 360 N.J. Super. 191 (App. Div. 2002), O’Shea v. Township of West Milford, GRC Complaint No. 2004-207 (September 2005), Fisher v. Township of Fairfield (Essex), GRC Complaint No. 2002-39 (September 2003), Shain v. Township of Lakewood, GRC Complaint No. 2002-112 (February 2004) and Wicks v. Bernards Township Board of Education, GRC Complaint No. 2002-107 (February 2004).

¹³ The evidence of record shows that the privilege logs bear dates of March 5, 2007 and March 19, 2007. It is unclear whether the logs were actually delivered to the Complainant on those dates.

¹⁴ Other correspondence provided in the Denial of Access Complaint is not relevant to this complaint. Steve Hyman v. City of Jersey City (Hudson), 2007-118 – Findings and Recommendations of the Executive Director

The Complainant's Counsel requests that the City provide the financial records not included in records already provided and that the City redact the portions of the withheld records protected by attorney-client privilege or by the ACD exemption and make the remainder of the records available with a general nature description of the information removed.

May 21, 2007

Offer of Mediation sent to both parties.

May 29, 2007

The Complainant and Custodian agree to mediation in this complaint.

May 31, 2007

The GRC sends this complaint to mediation.

May 20, 2008

Complaint referred back from mediation.

June 5, 2008

Letter from the GRC to the Complainant's Counsel. The GRC informs the Complainant's Counsel that she has the opportunity to amend this Denial of Access Complaint prior to the GRC's request for the Statement of Information from the Custodian. The GRC states that the Complainant Counsel's response is due by close of business on June 12, 2008.

June 11, 2008

Letter from the Complainant's Counsel to the GRC. The Complainant's Counsel requests an extension of the deadline to amend this complaint.

June 11, 2008

Letter from the GRC to the Complainant's Counsel. The GRC grants the Complainant's Counsel an extension until June 19, 2008 to amend this complaint.

June 17, 2008

Letter from the Complainant's Counsel to the GRC. The Complainant's Counsel states that upon review of this complaint, the Complainant's Counsel does not want to amend the current complaint.

July 10, 2008

Request for the Statement of Information sent to the Custodian.

July 17, 2008

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

- Complainant's OPRA request dated October 25, 2006.
- Letter from the Custodian to the Complainant dated October 26, 2006.
- City of Jersey privilege log dated March 5, 2007.
- City of Jersey privilege log dated March 19, 2007.

The Custodian certifies that his search included disseminating the request to the appropriate personnel in order to fulfill the request.

The Custodian states that he responded to the Complainant's OPRA request on the following day after receipt, stating that the request had been disseminated to the appropriate City officials and that the Complainant may want to contact the Jersey City Redevelopment Agency for additional records.

The Custodian avers that he has worked persistently to supply all records requested to the Complainant. The Custodian further avers that countless hours have been spent by the Custodian and City officials to provide the Complainant with an estimated 7,000 pages of records. The Custodian contends that the Complainant filed this complaint because he disagreed with the exemptions asserted for records not disclosed in the two (2) privilege logs.

Analysis

Whether the Custodian unlawfully denied access to the requested records?

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

OPRA also states that:

"[i]mmediate access ordinarily shall be granted to budgets, *bills*, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information." (Emphasis added.) N.J.S.A. 47:1A-5.e.

OPRA further provides that:

"[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and

promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ...” N.J.S.A. 47:1A-5.g.

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.

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

The Custodian responded in writing to the Complainant’s October 25, 2006 OPRA request on October 26, 2006 stating that the Complainant’s request had been disseminated to the appropriate City offices.

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5.g. Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

The Custodian’s response in this complaint is insufficient under OPRA because although the Custodian responded in writing stating that the request was disseminated to the appropriate City officials, he failed to request a specific extension of time on which access to the requested records would be granted or denied. Therefore, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access,

denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).

Additionally, the invoices and bills requested are specifically classified as “immediate access” records pursuant to N.J.S.A. 47:1A-5.e. In David Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 28, 2007), the GRC held that “immediate access language of OPRA (N.J.S.A. 47:1A-5.e.) suggests that the Custodian was still obligated to immediately notify the Complainant...” Inasmuch as OPRA requires a custodian to respond within a statutorily required timeframe, when immediate access records are requested, a custodian should respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request.

Therefore, because the Custodian failed to immediately grant or deny access to the requested bills and vouchers, request additional time to respond or request clarification of the request, the Custodian has violated N.J.S.A. 47:1A-5.e.¹⁵

Moreover, the Custodian withheld 297 pages of records from disclosure asserting that the records are exempt from OPRA either as attorney-client privileged or ACD material pursuant to N.J.S.A. 47:1A-1.1. The Custodian released two privilege logs to the Complainant on March 5, 2007 and March 19, 2007 respectively, outlining the records deemed to be exempt from disclosure and the reason for denial.¹⁶

In Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the Complainant appealed a final decision of the GRC¹⁷ in which the GRC dismissed the complaint by accepting the Custodian’s legal conclusion for the denial of access without further review. The court stated that:

“OPRA contemplates the GRC’s meaningful review of the basis for an agency’s decision to withhold government records...When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers.”

The court also stated that:

“[t]he statute also contemplates the GRC’s *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the ‘Open Public Meetings Act,’ N.J.S.A. 10:4-6 to -21, it also provides that the GRC ‘may go into

¹⁵ The Custodian’s Counsel did eventually request an extension of time to respond to this complaint, but did so well after the appropriated time frame under OPRA.

¹⁶ The dates on which the Custodian provided records responsive and the privilege logs were provided as part of the Denial of Access Complaint.

¹⁷ Paff v. NJ Department of Labor, Board of Review, GRC Complaint No. 2003-128 (October 2005).

Steve Hyman v. City of Jersey City (Hudson), 2007-118 – Findings and Recommendations of the Executive Director

closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.’ N.J.S.A. 47:1A-7f. This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.”

Further, the court stated that:

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

Therefore, pursuant to Paff, supra, the GRC must conduct an *in camera* review of all records contained within the privilege logs dated March 5, 2007 and March 19, 2007 to determine the validity of the Custodian’s assertion that the record constitutes attorney-client privileged or ACD material which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

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

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007).
2. Because the Custodian failed to immediately grant or deny access to the requested bills and vouchers, request additional time to respond or request clarification of the request, the Custodian has also violated N.J.S.A. 47:1A-5.e.
3. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of all records contained within the privilege logs dated March 5, 2007 and March

19, 2007 to determine the validity of the Custodian's assertion that the record constitutes attorney-client privileged or advisory, consultative or deliberative material which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.

4. **The Custodian must deliver¹⁸ to the Council in a sealed envelope nine (9) copies of the requested unredacted document (see No. 3 above), a document or redaction index¹⁹, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the document provided is the document requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

March 18, 2009

¹⁸ 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 office by the deadline.

¹⁹ The document or redaction index should identify the document and/or each redaction asserted and the lawful basis for the denial.