



**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*

**FINAL DECISION**

**June 11, 2009 Government Records Council Meeting**

Chris Rogers  
Complainant

Complaint No. 2007-243

v.

Roxbury Township Board of Education (Morris)  
Custodian of Record

At the June 11, 2009 public meeting, the Government Records Council (“Council”) considered the May 20, 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. Because the Custodian provided the Complainant with all the information necessary for a proper response within the seven (7) business days as mandated by N.J.S.A. 47:1A-5.i, the Custodian’s response was timely and proper, 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 evidence of record demonstrates that the Computer Technician has the expertise necessary to complete all the tasks required to fulfill the Complainant’s OPRA request, pursuant to Tina Renna v. County of Union, GRC Complainant No. 2004-134 (January 2005), the portion of the special service fee assessed for the services of the Supervisor of Technology is invalid and the overall fee should be reduced by the Supervisor of Technology’s ten (10) hours at \$58.79, or \$587.90.
3. Because of the extraordinary volume, time, and effort required to fulfill the Complainant’s OPRA request, with the exception of the Supervisor of Technology’s ten (10) hours at \$58.79, or \$587.90, which only amounts to 5% of the asserted special service charge, the special service fee assessed by the Custodian is reasonable and valid pursuant to The Courier Post v. Lenape Regional High School, 360 N.J.Super. 191 (Law Div. 2002) and N.J.S.A. 47:1A-5.c. Therefore, the special service fee permissible under N.J.S.A. 47:1A-5.c. is \$11,586.08 (\$12,173.98 - \$587.90 = \$11,586.08). As such, the Custodian did not unlawfully denied the Complainant access to the records



requested when she assessed the Complainant a special service fee of \$1,161 to fulfill the Complainant's OPRA request.

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 11<sup>th</sup> Day of June, 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: June 16, 2009**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 11, 2009 Council Meeting**

**Chris Rogers<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-243**

v.

**Roxbury Township Board of Education (Morris)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. Executed Joint Bargaining Agreement between the Administrator's Joint Bargaining Unit and the Roxbury Board of Education.
2. Current teachers' contract.
3. Current teachers' pay guide for school years 2005-2006, 2006-2007 and 2007-2008.
4. All e-mails from April 1, 2007 to present sent or received by Board of Education members Ed Hill, Joseph Perferti, Sr., Pat Miller, Theresa D'Agostino, John Moschella, and Carol Scheneck.

**Request Made:** September 19, 2007

**Response Made:** September 19, 2007

**Custodian:** Ruthann Quinn

**GRC Complaint Filed:** October 24, 2007<sup>3</sup>

**Background**

**September 19, 2007**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**September 19, 2007**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the same date the request was received. The Custodian states that her secretary will contact the Complainant to arrange for delivery of Items No. 1, 2, and 3 of the Complainant's OPRA request. The Custodian also states that the teachers' contract or pay guide for the school year 2007-2008 does not exist. The Custodian further states that fulfilling Item No. 4 of the OPRA request will require additional time and copying fees. The Custodian states that she will provide the

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Mark Zitomer, Esq. (Morristown, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

Complainant with an estimate of the cost for reproducing the records sought as soon as the information becomes available.

**September 26, 2007**

E-mail from the Custodian to the Complainant. On the fifth (5<sup>th</sup>) business day after receipt of the request, the Custodian sends the Complainant an e-mail stating that given the unusual nature of the Complainant's request and pursuant to the advice of counsel, in accordance with N.J.S.A. 47:1A-5.c., a special service charge will be assessed. The Custodian states that there will be a charge of approximately \$226.00, resulting from ten (10) hours of work by a technician, and approximately \$875.00, resulting from ten (10) hours of work by the Custodian of Record to review each printed document and to redact non-disclosable information. The Custodian states that she believes that the OPRA request will require ten (10) hours or more to fulfill. The Custodian also states that there will be a copying cost of approximately \$60.00. The Custodian indicates that in order to proceed with the OPRA request, a deposit of \$1,000.00 will be required.<sup>4</sup>

**September 26, 2007**

E-mail from the Complainant to the Custodian. The Complaint states that before submitting a Denial of Access Complaint to the Government Record Council, he would like to give the Custodian an opportunity to have the Custodian's attorney review N.J.S.A. 47:1A-5.c. The Complainant requests that the Custodian specify the elements that make the Complainant's OPRA request unusual. The Complainant offers to allow the Custodian to fulfill the OPRA request in small weekly or daily batches from the date of the OPRA request to the end of the school year. The Complainant states that he intends to pay regular copying cost.

**September 29, 2007**

Letter from the Custodian to the Complainant. The Custodian states that the Complainant is not being denied access to the records requested. The Custodian states that the Complainant is being assessed a special service charge to fulfill the OPRA request. The Custodian states that this fee is authorized by N.J.S.A. 47:1A-5.c. The Custodian states that the Roxbury Board of Education's ("Board") attorney is knowledgeable concerning the special service charge provision of OPRA. The Custodian states that if the Complainant's OPRA request was limited to a smaller group of people or over a shorter period of time then the OPRA request would not require as much time, effort, or warrant such a high special service charge. The Custodian further states that even if the OPRA request was fulfilled over a longer period of time, the request would still warrant a special service charge.

**October 5, 2007**

Memorandum from Lilly Chang, Supervisor of Technology, to Ruthann Quinn, Custodian of Record. Ms. Chang states that this project would require approximately 32 hours of labor. Ms. Chang states that labor includes the time required to open each of the named users' current e-mails as well as seven months of backups, one at a time. Ms.

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<sup>4</sup> The total special service fee assessed by the Custodian for fulfilling the Complainant's OPRA request is \$1,161.00, for which the Custodian requests a \$1,000.00 deposit.

Chang states that this means eight (8) different mailboxes for each user<sup>5</sup> for a total of 32 mailboxes. Ms. Chang states that each mailbox contains several folders which include sent items, inbox, drafts, junk mail, deleted items, and any folders manually created by the user. Ms. Chang states that each e-mail and its associated attachments are to be opened, printed, collated and delivered.

Ms. Chang indicates that because the Information Technology Department has not been given a subject matter with which to narrow the scope of the search, there will be a certain amount of redundancy in the records provided to the Complainant. Ms. Chang states that it would cost more to eliminate duplicate e-mails than to print them. Ms. Chang also states that there are a small number of e-mails that may have been deleted between backups.

Ms. Chang states that she has sampled a user account which she believes to be representative of the Board members' accounts. In this account, she states that there are 1,742 e-mails to be opened, printed and collated. Ms. Chang estimates that this e-mail account alone would generate 2,800 pages with attachments. Ms. Chang estimates that all four (4) accounts would generate 11,200 pages of records. That equates to 2.25 cases of paper and additional toner. Ms. Chang states that it is her understanding that this OPRA request would require three (3) copies of each record so that one can be saved, a copy redacted and a copy given to Complainant. According to Ms. Chang, three (3) copies of the records requested would require six (6) to seven (7) boxes of paper.

#### **October 24, 2007**

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

- Complainant's OPRA request dated September 19, 2007
- E-mail from the Custodian to the Complainant dated September 19, 2007
- E-mail from the Complainant to the Custodian dated September 26, 2007
- E-mail from the Custodian to the Complainant dated September 26, 2007
- Letter from the Complainant to the Custodian dated September 29, 2007

The Complainant alleges that a special service charge in excess of \$1,000.00 equates to a denial of access to the records requested. The Complainant also states that in an effort to avoid any interference with the day-to-day operation of the Board, he offered the Custodian the opportunity to fulfill the request over a longer period of time. The Complainant states that the Custodian did not accept this offer.

#### **October 18, 2007**

Offer of Mediation sent to both parties.

#### **October 23, 2007**

The Custodian agrees to mediate this complaint.

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<sup>5</sup> The Custodian states that only four (4) of the six (6) Board members use their Board e-mail account in her answers to the special service analysis chart.  
Chris Rogers v. Roxbury Township Board of Education (Morris), 2007-243 – Findings and Recommendations of the Executive Director 3

**October 24, 2007**

The Complainant agrees to mediate this complaint.

**February 15, 2008**

The Complaint is referred back to the GRC from Mediation.

**June 10, 2008**

Request for the Statement of Information sent to the Custodian.

**June 19, 2008**

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

- Letter from the Custodian to the Complainant dated September 29, 2007
- The Complainant's Denial of Access Complaint dated October 1, 2007
- Memo from Lilly Chang to Ruthann Quinn dated October 5, 2007

The Custodian certifies that prior to receiving the Denial of Access Complaint, she provided the Complainant with several e-mail responses advising the Complainant of the lengthy process required to comply with the OPRA request. The Custodian certifies that on September 19, 2007, September 26, 2007 and September 29, 2007, she sent e-mail responses to the Complainant regarding his OPRA request. The Custodian also acknowledges that the Board possesses the technology to fulfill the Complainant's OPRA request. However, the Custodian states that the personnel hours necessary to fulfill the OPRA request are significant and burdensome to the district.

The Custodian certifies that at the time of the Complainant's OPRA request, she informed the Complainant that a special services charge would be assessed. The Custodian argues that pursuant to N.J.S.A. 47:1A-5.c., when an extraordinary amount of time and effort is required to accommodate an OPRA request, a public agency "may charge, in addition to the actual direct cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies." The Custodian further argues that under the statute, a requestor is granted the opportunity to review and object to the charge before it is incurred. *Id.* The Custodian states that when the GRC confronts objections to a special service charge, the GRC applies a fourteen (14) point analysis to determine whether a special service charge is warranted and whether the special service charge is reasonable.

The Custodian argues that in Fisher v. Dept. of Law & Public Safety, Div of Law, GRC Complaint No. 2004-55 (November 2006), the GRC considered the same factors addressed herein to reach its conclusion. The Custodian argues that the responding agency in Fisher contended that several attorneys would be needed to search through thousands of e-mails as well as numerous documents in order to comply with Fisher's OPRA request. The Custodian states that the GRC concluded that based on the voluminous nature of the request, a special service charge was indeed warranted in light of the time required to collect, organize and redact privileged information in complying with the request.

The Custodian argues that based on the fourteen (14) point analysis used in Fisher, it is evident that the Complainant’s OPRA request demands “extraordinary effort,” for which N.J.S.A. 47:1A-5.c. authorizes a special service charge. The Custodian states that for the reasons stated above, the Denial of Access Complaint should be dismissed.

**July 24, 2008**

Letter from the GRC to the Custodian. The GRC encloses the fourteen (14) point analysis and requests that the Custodian complete same.

**July 30, 2008<sup>6</sup>**

The Custodian provides certified answers to the fourteen (14) point analysis as follows:

| Questions  | Custodian’s Response  |
|--|---|
| 1. What records are requested?   | All e-mails from April 1, 2007 to present sent or received by Board of Education members Ed Hill, Joseph Perfertti, Sr., Pat Miller, Theresa D’Agostino, John Moschella, and Carol Scheneck.  |
| 2. Give a general nature description and number of the government records requested. | The request is voluminous. Four (4) out of six (6) Board members use their e-mail for correspondence. There are 8 different mailboxes for each user for a total of 32 mailboxes. Each mailbox includes several folders, sent items, inbox, drafts, junk mails, deleted items, and manually created folders. Each e-mail and its associated attachments are to be opened, printed, collated and delivered. A representative sample of a Board member’s account yields 1,742 e-mails to be opened, printed, and collated. It is estimated that this e-mail account would generate 2,800 pages with attachments. All four (4) accounts would generate 11,200 pages of records. That equates to 2.25 cases of paper and additional toner. This OPRA request would require three (3) copies of each record so that one can be saved, a copy redacted, and a copy given to the Complainant. According to Ms. Chang, three (3) copies of the records requested would generate six (6) to seven (7) boxes of paper. |
| 3. What is the period of time over which the records extend?                         | April 2007 to present.  |
| 4. Are some or all of the records sought archived or in storage?                     | All records are electronically archived except for the ones generated in the current month.   |
| 5. What is the size of the agency (total number of employees)?                       | 635 employees.  |
| 6. What is the number of   | Aside from the office services associated with copying the already compiled e-  |

<sup>6</sup> Additional correspondence was submitted by the parties. However, said correspondence is either not relevant to this complaint or restates the facts/assertions already presented to the GRC.  
Chris Rogers v. Roxbury Township Board of Education (Morris), 2007-243 – Findings and Recommendations of the Executive Director 5

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| employees available to accommodate the records request?   | mails, there will be two (2) employees available to accommodate the technological aspects of the Complainant's OPRA request.  |
| 7. To what extent do the requested records have to be redacted?   | There are 11,200 pages to be reviewed and redacted if appropriate.  |
| 8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve and assemble the records for copying?          | A Computer technician is required to locate, retrieve and print records at \$22.69 per hour for an estimated 32 hours.<br><br>The District's Supervisor of Technology is required to assist in the process at \$58.79 per hour for an estimated 10 hours. |
| 9. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested? | The Custodian of records to review and redact as appropriate at \$86.90 per hour for an estimated 24 hours.   |
| 10. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to return records to their original storage place?                | N/A   |
| 11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?                                      | The complexity of the Microsoft Exchange mail server requires that a skilled computer technician review the electronically archived files.  |
| 12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?   | The work will be performed by Ruthann Quinn: Custodian of Records, Lilly Chang: Supervisor of Technology, and Mic Shields: Computer Technician.   |
| 13. What is the availability of information technology and copying capabilities?  | The technology is readily available. However the breadth, time, and cost of the Complainant's OPRA request warrant a special service charge.  |
| 14. Give a detailed estimate categorizing the hours needed to   | This project would require approximately 32 hours of labor. Labor includes the time required to open each of the named users current e-mails as well as seven (7)   |



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| <p>identify, copy or prepare for inspection, produce and return the requested documents.</p> | <p>months of backups, one at a time. This means eight (8) different mailboxes for each user for a total of 32 mailboxes. Each mailbox contains several folders which include sent items, inbox, drafts, junk mail, deleted items, and manually created folders. Each e-mail and its associated attachments are to be opened, printed, collated and delivered.</p> <p>Because the Information Technology department has not been given a subject matter with which to narrow the scope of the search, there will be a certain amount of redundancy. It would cost more to eliminate duplicate e-mails than to print them.</p> |
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**November 25, 2008**

Additional certification from the Custodian. The Custodian certified that the total estimated special service fee for completion of the Complainant’s OPRA request of 11,200 pages in triplicate is \$12,173.98. This estimate includes: \$3,399.58 in personnel charges; \$8,407.50 in copying charges; and \$366.90 for supplies of two (2) toner cartridges and two and a half ( 2.5) cases of paper.

**Analysis**

**Whether the special service charge assessed by the custodian is warranted and reasonable pursuant to OPRA?**

OPRA provides that:

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

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA 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.

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 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 to the Complainant's OPRA request was timely and proper. The Custodian responded on the same business day as receipt of the Complainant's OPRA request. The Complainant requested four (4) items. The Custodian stated that delivery of the first three (3) items of the Complainant's request would not pose a problem. However, the Custodian informed the Complainant that an additional fee would be required to fulfill the fourth (4<sup>th</sup>) item of the OPRA request. The Custodian stated that she would provide the Complainant with the amount of the fee as soon as the information became available. 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 official response on September 19, 2007 would be insufficient because it failed to notify the Complainant of the expected date of availability and the amount of the special service fee. However, the Custodian provided the Complainant with the promised information on the fifth (5<sup>th</sup>) business day after receipt of the Complainant's OPRA request.

Because the Custodian provided the Complainant with all the information necessary for a proper response within the seven (7) business days as mandated by N.J.S.A. 47:1A-5.i, the Custodian's response was timely and proper, 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).

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

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

*be reasonable and shall be based upon the actual direct cost of providing the copy or copies ...” (Emphasis added.) N.J.S.A. 47:1A-5.c.*

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

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5.c. *Id.* at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA:

- The volume of government records involved;
- The period of time over which the records were received by the governmental unit;
- Whether some or all of the records sought are archived;
- The amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying;
- The amount of time, if any, required to be expended by government employees to monitor the inspection or examination;<sup>7</sup> and
- The amount of time required to return the documents to their original storage place. *Id.* at 199.

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

Recognizing that many different variables may affect a determination of whether a special service charge is reasonable and warranted, the GRC established an analytical framework for situations which may warrant an assessment of a special service charge. This framework incorporates the factors identified in the Courier Post case, as well as additional relevant factors. For the GRC to determine when and whether a special service charge is reasonable and warranted, a Custodian must provide a response to the following questions:

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<sup>7</sup> With regard to this factor, the court stated that the government agency should bear the burden of proving that monitoring is necessary. *Id.* at 199.

1. What records are requested?
2. Give a general nature description and number of the government records requested.
3. What is the period of time over which the records extend?
4. Are some or all of the records sought archived or in storage?
5. What is the size of the agency (total number of employees)?
6. What is the number of employees available to accommodate the records request?
7. To what extent do the requested records have to be redacted?
8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve and assemble the records for copying?
9. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?
10. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to return records to their original storage place?
11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?
12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?
13. What is the availability of information technology and copying capabilities?
14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents.

In the complaint now before the Council, the Custodian responded to the above questions as follows:

| Questions  | Custodian's Response   |
|--|--|
| 1. What records are requested?                         | All e-mails from April 1, 2007 to present sent or received by Board of Education members Ed Hill, Joseph Perfertti, Sr., Pat Miller, Theresa D'Agostino, John Moschella, and Carol Scheneck. |
| 2. Give a general nature description and number of the | The request is voluminous. Four (4) out of six (6) Board members use their e-mail for correspondence. There are 8 different mailboxes for each user for a total                              |

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| government records requested.   | <p>of 32 mailboxes. Each mailbox contains several folders which include, sent items, inbox, drafts, junk mail, deleted items, and manually created folders. Each e-mail and its associated attachments are to be opened, printed, collated and delivered.</p> <p>A representative sample of a Board member’s account yields 1,742 e-mails to be opened, printed, and collated. It is estimated that this e-mail account would generate 2,800 pages with attachments. All four (4) accounts would generate 11,200 pages of records. That equates to 2.25 cases of paper and additional toner. This OPRA request would require three (3) copies of each record so that one can be saved, a copy redacted, and a copy given to the Complainant. Three (3) copies of the records requested would generate six (6) to seven (7) boxes of paper.</p> |
| 3. What is the period of time over which the records extend?  | April 2007 to present.   |
| 4. Are some or all of the records sought archived or in storage?  | All records are electronically archived except for the ones generated in the current month.  |
| 5. What is the size of the agency (total number of employees)?  | 635 employees.   |
| 6. What is the number of employees available to accommodate the records request?  | Aside from the office services associated with copying the already compiled e-mails, there will be two (2) employees available to accommodate the technological aspects of the Complainant’s OPRA request.   |
| 7. To what extent do the requested records have to be redacted?   | There are 11,200 pages to be reviewed and redacted if appropriate.   |
| 8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve and assemble the records for copying?          | <p>A Computer technician is required to locate, retrieve and print records at \$22.69 per hour for an estimated 32 hours.</p> <p>The District’s Supervisor of Technology is required to assist in the process at \$58.79 per hour for an estimated 10 hours.</p>   |
| 9. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested? | The Custodian of records to review and redact as appropriate at \$86.90 per hour for an estimated 24 hours.  |
| 10. What is the level of personnel, hourly rate and number of hours, if any, required   | N/A  |

|   |   |
|---|---|
| for a government employee to return records to their original storage place?  |   |
| 11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?        | The complexity of the Microsoft Exchange mail server requires that a skilled computer technician review the electronically archived files.  |
| 12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?                 | The work will be performed by Ruthann Quinn- Custodian of Records, Lilly Chang- Supervisor of Technology, and Mic Shields- Computer Technician.   |
| 13. What is the availability of information technology and copying capabilities?  | The technology is readily available. However the breadth, time, and cost of the Complainant's OPRA request warrant a special service charge.  |
| 14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents. | This project would require approximately 32 hours of labor. Labor includes the time required to open each of the named users current e-mails as well as seven (7) months of backups, one at a time. This means eight (8) different mailboxes for each user for a total of 32 mailboxes. Each mailbox contains several folders which include sent items, inbox, drafts, junk mail, deleted items, and manually created folders. Each e-mail and its associated attachments are to be opened, printed, collated and delivered.<br>Since the Information Technology department has not been given a subject matter with which to narrow the scope of the search, there will be a certain amount of redundancy. It would cost more to eliminate duplicate e-mails than to print them. |

In light of the volume and the extraordinary expenditure of time and effort necessary to fulfill the Complainant's OPRA request and pursuant to Courier Post and N.J.S.A. 47:1A-5.c., a special service charge is warranted. When an OPRA request requires an extraordinary amount of time and effort, OPRA provides that a, "public agency may charge, *in addition* to the actual cost of duplicating the record, a *special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies ...*" (Emphasis added.) N.J.S.A. 47:1A-5.c. The Custodian has certified that the total estimated special service fee for completion of the Complainant's OPRA request of 11,200 pages in triplicate, which includes the copying charges enumerated in OPRA, is \$12,173.98.

In Tina Renna v. County of Union, GRC Complainant No. 2004-134 (January 2005), the complainant requested all press releases and publicity photos for the years 1999, 200, 2001, and 2002. The GRC found that, based upon the extraordinary effort required to fulfill the Complainant's request, a special service charge was warranted. However, the GRC reduced the amount of the special service charge. The custodian stated that a total of 80 hours of labor were required to fulfill the complainant's OPRA

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request. The custodian stated that the agency's photographer was needed to compile the publicity photos for 35 of the 80 hours and a clerk was needed to compile the press releases for 35 hours also. The GRC reduced the special service charge by the 35 hours assessed for the photographer's time because the photographer's expertise was not needed to fulfill the request. The labor that was to be completed by the photographer could be completed by the clerk who had a lower hourly rate.

The Custodian has certified that the Complainant's OPRA request would require approximately 32 hours of labor by a Computer Technician, 24 hours of labor by the Custodian of Record, and ten (10) hours of labor by the Supervisor of Technology. The Custodian further certified that there are only two (2) people qualified to access the records requested. The Custodian certified that there are eight (8) different mailboxes for each user for a total of 32 mailboxes. The Custodian certified that each mailbox contains several folders which include sent items, inbox, drafts, junk mail, deleted items, and manually created folders. The Custodian certified that labor includes the time required to open each of the users' current e-mails, as well as seven (7) months of backups one at a time. The Custodian asserted that each e-mail and its associated attachments have to be opened, printed, collated and delivered.

The Custodian certified that a representative sample of a Board member's account yields 1,742 e-mails to be opened, printed, and collated. The Custodian estimated in her certification that this e-mail account would generate 2,800 pages with attachments. The Custodian asserted that all four (4) accounts would generate 11,200 pages of records, equating to 2.25 cases of paper and additional toner. The Custodian certified that the Complainant's OPRA request would require three (3) copies of each record so that one can be saved, a copy redacted, and a copy given to the Complainant. The Custodian asserted that three (3) copies of the records requested would generate six (6) to seven (7) boxes of paper totaling 33,600 sheets of paper.

The Custodian in the current case has detailed the tasks necessary to complete the Complainant's OPRA request. The Custodian has certified that the Supervisor of Technology would assist in the process of retrieving the responsive e-mails. The Custodian has submitted no proof that the Supervisor of Technology possesses an expertise necessary to fulfilling the Complainant's OPRA request. The evidence of record demonstrates that the Computer Technician has the expertise necessary to complete all the tasks required to fulfill the Complainant's OPRA request. As in Renna, supra, the task that is expected to be completed by the higher paid employee, in this case the Supervisor of Technology, can be completed by the lower paid employee, the Computer Technician. Pursuant to Renna, supra, the portion of the special service fee assessed for the services of the Supervisor of Technology is invalid and the overall fee should be reduced by the \$587.90. Therefore, the special service fee permissible under N.J.S.A. 47:1A-5.c. is \$11,586.08 ( $\$12,173.98 - \$587.90 = \$11,586.08$ ).

Pursuant to The Courier Post v. Lenape Regional High School, 360 N.J. Super. 191, 199 (Law Div. 2002) and N.J.S.A. 47:1A-5.c., the special service fee asserted by the Custodian is reasonable, with the exception of the Supervisor of Technology's ten (10) hours at \$58.79, or \$587.90, which only amounts to 5% of the asserted special service charge. The Custodian has certified that there are a total of 11,200 records that are

responsive to the Complainant's OPRA request and that three (3) copies of each are needed. The Custodian has also certified that a total of 66 hours of labor are necessary to fulfill the Complainant's OPRA request. The Custodian has further certified to the hourly rate of each of the trained individuals necessary to fulfill the Complainant's OPRA request. The Custodian estimate of \$12,173.98 includes: \$3,399.58 in personnel charges; \$8,407.50 in copying charges; and \$366.90 for supplies of two (2) toner cartridges and two and a half ( 2.5) cases of paper.

Because of the extraordinary volume, time, and effort required to fulfill the Complainant's OPRA request, with the exception of the Supervisor of Technology's ten (10) hours at \$58.79, or \$587.90, which only amounts to 5% of the asserted special service charge, the special service charge assessed by the Custodian is reasonable and valid pursuant to The Courier Post v. Lenape Regional High School, 360 N.J.Super. 191 (Law Div. 2002) and N.J.S.A. 47:1A-5.c. The special service fee permissible under N.J.S.A. 47:1A-5.c. is \$11,586.08 (\$12,173.98 - \$587.90 = \$11,586.08). As such, the Custodian did not unlawfully deny the Complainant access to the records requested when he assessed the Complainant a special service fee of \$1,161.00<sup>8</sup> to fulfill the Complainant's OPRA request.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian provided the Complainant with all the information necessary for a proper response within the seven (7) business days as mandated by N.J.S.A. 47:1A-5.i, the Custodian's response was timely and proper, 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 evidence of record demonstrates that the Computer Technician has the expertise necessary to complete all the tasks required to fulfill the Complainant's OPRA request, pursuant to Tina Renna v. County of Union, GRC Complainant No. 2004-134 (January 2005), the portion of the special service fee assessed for the services of the Supervisor of Technology is invalid and the overall fee should be reduced by the Supervisor of Technology's ten (10) hours at \$58.79, or \$587.90.
3. Because of the extraordinary volume, time, and effort required to fulfill the Complainant's OPRA request, with the exception of the Supervisor of Technology's ten (10) hours at \$58.79, or \$587.90, which only amounts to 5% of the asserted special service charge, the special service fee assessed by the Custodian is reasonable and valid pursuant to The Courier Post v. Lenape Regional High School, 360 N.J.Super. 191 (Law Div. 2002) and N.J.S.A. 47:1A-5.c. Therefore, the special service fee permissible under N.J.S.A. 47:1A-5.c. is \$11,586.08 (\$12,173.98 - \$587.90 = \$11,586.08). As such, the

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<sup>8</sup> The total special service fee assessed by the Custodian for fulfilling the Complainant's OPRA request was \$1,161.00, for which the Custodian requested a \$1,000.00 deposit.



Custodian did not unlawfully denied the Complainant access to the records requested when she assessed the Complainant a special service fee of \$1,161 to fulfill the Complainant's OPRA request.

Prepared By: Sherin Keys, Esq.  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

May 20, 2009