



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

**JON S. CORZINE**  
*Governor*

**CHARLES A. RICHMAN**  
*Acting Commissioner*

**FINAL DECISION**

**November 18, 2009 Government Records Council Meeting**

David G. Matthews  
Complainant

Complaint No. 2008-134

v.

Englewood Public Schools,  
Board of Education (Bergen)  
Custodian of Record

At the November 18, 2009 public meeting, the Government Records Council (“Council”) considered the November 10, 2009 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Because the Custodian provided the Complainant with the requested check, as well as because the Custodian provided certified confirmation of compliance to the GRC’s Executive Director within the five (5) business days as ordered by the Council, the Custodian has complied with the Council’s September 30, 2009 Interim Order
2. Although the Custodian’s failure to respond in writing within the statutorily mandated seven (7) business days resulted in a “deemed” denial of the Complainant’s request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. and the Custodian failed to bear his burden of proving a lawful denial of access to the requested check, because the Custodian complied with the Council’s September 30, 2009 Interim Order, it is concluded that the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian’s unlawful “deemed” denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

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 18<sup>th</sup> Day of November, 2009

Robin Berg Tabakin, Chair  
Government Records Council

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

Harlynn A. Lack, Secretary  
Government Records Council

**Decision Distribution Date: November 23, 2009**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
November 18, 2009 Council Meeting**

**David G. Matthews<sup>1</sup>  
Complainant**

**GRC Complaint No. 2008-134**

v.

**Englewood Public Schools, Board of  
Education (Bergen)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Any record of payments, whether check, wire transfer, etc., made by Englewood Public Schools, Board of Education (“BOE”) to the law firm Schenck, Price, Smith & King, LLC (Morristown, NJ).

**Request Made:** June 2, 2008

**Response Made:** June 23, 2008

**Custodian:** James Olobardi

**GRC Complaint Filed:** June 19, 2008<sup>3</sup>

**Background**

**September 30, 2009**

Government Records Council’s (“Council”) Interim Order. At its September 30, 2009 public meeting, the Council considered the September 23, 2009 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’s failure to respond in writing to the Complainant’s OPRA request for payments made by Englewood Public Schools to Schenck, Price, Smith & King, LLC, either granting access, denying access, seeking clarification or properly requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s requests 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 certified that a responsive record existed at the time of the Complainant’s OPRA request, the Custodian has unlawfully denied access

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

<sup>2</sup> Represented by Lindabury, McCormick, Estabrook & Cooper, P.C. (Westfield, NJ).

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

to the check dated February 28, 2008. **The Custodian shall disclose the requested check with appropriate redactions, if any, and a redaction index detailing the general nature of the information redacted and the lawful basis for such redactions as required by N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-5.g.**

3. **The Custodian shall comply with Item No. 2 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<sup>4</sup>, to the Executive Director.**
4. 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.

#### **October 5, 2009**

Council's Interim Order distributed to the parties.

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

Letter from the Custodian to the GRC. The Custodian states that enclosed is a copy of the check No. 12074 paid to Schenck, Price, Smith and King in the amount of \$22,051.56.<sup>5</sup>

#### **October 8, 2009**

E-mail from the GRC to the Custodian. The GRC states that it has received the Custodian's letter dated October 6, 2009. The GRC states that the Council's September 30, 2009 Interim Order required that the Custodian provide certified confirmation that he complied with the Council's Order to provide the requested check to the Complainant. The GRC states that, although the Custodian sent a letter to the GRC attaching the requested record and copying the Complainant, the Custodian's compliance will not be complete until he provides certified confirmation that the record has been provided to the Complainant.

The GRC states that the Custodian's compliance is due by close of business on October 13, 2009.

#### **October 9, 2009**

Custodian's response to the Council's Interim Order. The Custodian provides certified confirmation that he has complied with the Council's September 30, 2009 Interim Order.

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<sup>4</sup> "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."

<sup>5</sup> The Custodian copies the Complainant on said letter.

## Analysis

### **Whether the Custodian complied with the Council's September 30, 2009 Interim Order?**

The Council's Interim Order dated September 30, 2009 directed the Custodian to provide the Complainant with the check dated February 28, 2008 paid to Schenck, Price, Smith and King. The Council's Interim 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.

Via letter dated October 6, 2009, the Custodian sent a letter attaching the record responsive to the GRC's Interim Order and copying the Complainant. The Custodian subsequently provided certified confirmation of his compliance to the GRC on October 9, 2009.

Therefore, because the Custodian provided the Complainant with the requested check, as well as because the Custodian provided certified confirmation of compliance to the GRC's Executive Director within the five (5) business days as ordered by the Council, the Custodian has complied with the Council's September 30, 2009 Interim Order.

### **Whether the Custodian's unlawful denial of access to the requested check 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).

Although the Custodian's failure to respond in writing within the statutorily mandated seven (7) business days resulted in a "deemed" denial of the Complainant's request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. and the Custodian failed to bear his burden of proving a lawful denial of access to the requested check, because the Custodian complied with the Council's September 30, 2009 Interim Order, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's unlawful "deemed" denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Because the Custodian provided the Complainant with the requested check, as well as because the Custodian provided certified confirmation of compliance to the GRC's Executive Director within the five (5) business days as ordered by the Council, the Custodian has complied with the Council's September 30, 2009 Interim Order
2. Although the Custodian's failure to respond in writing within the statutorily mandated seven (7) business days resulted in a "deemed" denial of the Complainant's request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. and the Custodian failed to bear his burden of proving a lawful denial of access to the requested check, because the Custodian complied with the Council's September 30, 2009 Interim Order, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's unlawful "deemed" denial of access appears negligent and heedless since he is vested with the legal responsibility of granting and denying access in accordance with the law.

Prepared By: Frank F. Caruso  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

November 10, 2009



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

JON S. CORZINE  
Governor

CHARLES A. RICHMAN  
Acting Commissioner

INTERIM ORDER

September 30, 2009 Government Records Council Meeting

David G. Matthews  
Complainant

Complaint No. 2008-134

v.

Englewood Public Schools,  
Board of Education (Bergen)  
Custodian of Record

At the September 30, 2009 public meeting, the Government Records Council (“Council”) considered the September 23, 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 for payments made by Englewood Public Schools to Schenck, Price, Smith & King, LLC, either granting access, denying access, seeking clarification or properly requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s requests 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 certified that a responsive record existed at the time of the Complainant’s OPRA request, the Custodian has unlawfully denied access to the check dated February 28, 2008. **The Custodian shall disclose the requested check with appropriate redactions, if any, and a redaction index detailing the general nature of the information redacted and the lawful basis for such redactions as required by N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-5.g.**
3. **The Custodian shall comply with Item No. 2 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<sup>1</sup>, to the Executive Director.**

4. 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 30<sup>th</sup> Day of September, 2009

Robin Berg Tabakin, Chair  
Government Records Council

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

Janice L. Kovach, Secretary  
Government Records Council

**Decision Distribution Date: October 5, 2009**

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<sup>1</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**David G. Matthews<sup>1</sup>  
Complainant**

**GRC Complaint No. 2008-134**

**v.**

**Englewood Public Schools, Board of Education (Bergen)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Any record of payments, whether check, wire transfer, etc., made by Englewood Public Schools, Board of Education (“BOE”) to the law firm Schenck, Price, Smith & King, LLC (Morristown, NJ).

**Request Made:** June 2, 2008

**Response Made:** June 23, 2008

**Custodian:** James Olobardi

**GRC Complaint Filed:** June 19, 2008<sup>3</sup>

**Background**

**June 2, 2008**

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.

**June 13, 2008**

Letter from the Complainant to Dr. Richard Segall (“Dr. Segall”), Interim Superintendent. The Complainant states that he submitted an OPRA request to the BOE on June 2, 2008. The Complainant states that he received no response from the Custodian and was not given any records after visiting the Business Office on June 11, 2008.

The Complainant requests that Dr. Segall ensure that the Complainant receives the records requested by the end of the business day.<sup>4</sup>

**June 19, 2008**

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

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

<sup>2</sup> Represented by Lindabury, McCormick, Estabrook & Cooper, P.C. (Westfield, NJ).

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

<sup>4</sup> The Complainant asserts that he hand-delivered his June 2, 2008 OPRA request to Dr. Segall on June 13, 2008.

- Complainant’s OPRA request dated June 2, 2008.
- Letter from the Complainant to Dr. Segall dated June 13, 2008.

The Complainant states that he submitted an OPRA request to the BOE on June 2, 2008. The Complainant states that after not receiving a response, he hand-delivered a second copy of the request to Dr. Segall on June 13, 2008. The Complainant states that he has received no response from either the Custodian or Dr. Segall.

The Complainant asserts that the requested records are readily available. The Complainant asserts that he believes access to the requested records is being unlawfully denied.

The Complainant does not agree to mediate this complaint.

**June 23, 2008**

Custodian’s response to the OPRA request. The Custodian responds in writing to the Complainant’s OPRA request on the fifteenth (15<sup>th</sup>) business day following receipt of such request. The Custodian states that Englewood Public Schools has not made any authorized payments to Schenck, Price, Smith & King, LLC.

**August 21, 2008**

Request for the Statement of Information sent to the Custodian.

**August 28, 2008**

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

- Complainant’s OPRA request dated June 2, 2008.
- Letter from the Custodian to the Complainant dated June 23, 2008.

The Custodian certifies that no search for the requested records was needed. The Custodian also certifies that no records were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management (“DARM”).

The Custodian certifies that he received the Complainant’s OPRA request on June 2, 2008. The Custodian certifies that he faxed the Complainant’s OPRA request to Counsel, who said he would respond to the Complainant’s OPRA request.

The Custodian certifies that upon learning that no response had been forwarded to the Complainant by Counsel, the Custodian responded to the OPRA request in writing on June 23, 2008 stating that no authorized payments had been made to Schenck, Price, Smith & King, LLC.

The Custodian certifies that two (2) erroneous payments were made to Schenck, Price, Smith & King, LLC: one (1) on February 28, 2008 in the amount of \$22,052.56 and one (1) on June 4, 2008 in the amount of \$25,552.95. The Custodian certifies that

both payments were reimbursed in full to Englewood Public Schools on April 9, 2008 and on or about June 23, 2008 respectively.

**July 9, 2009**

E-mail from the GRC to the Custodian. The GRC states it will need additional information. The GRC requests that the Custodian legally certify to the following:

1. Whether the BOE was in possession of the check dated February 28, 2008 at the time of the Complainant's OPRA request?
2. Whether the BOE still maintains said check?

The GRC requests that the Custodian submit his legal certification no later than July 13, 2009.

**July 13, 2009**

E-mail from the Custodian to the GRC. The Custodian requests additional time to submit the requested legal certification.

**July 13, 2009**

E-mail from the GRC to the Custodian. The GRC grants an extension of time until July 16, 2009 to submit the requested legal certification.

**July 16, 2009**

Custodian's legal certification to the GRC. The Custodian certifies that he was in possession of the check dated February 28, 2009 at the time of the Complainant's OPRA request.

**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 ..." (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 also 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.

Further, OPRA provides 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 GRC first turns to the issue of whether the Custodian responded to the Complainant's OPRA request in a timely manner.

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.<sup>5</sup> 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 in this complaint responded to the Complainant's OPRA request for payments made by Englewood Public Schools to Schenck, Price, Smith & King, LLC on June 23, 2008, or the fifteenth (15<sup>th</sup>) business day after receipt of the Complainant's request, stating that no records responsive to the Complainant's request exist.

Therefore, the Custodian's failure to respond in writing to the Complainant's OPRA request for payments made by Englewood Public Schools to Schenck, Price, Smith & King, LLC either granting access, denying access, seeking clarification or properly requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's requests pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley, supra.

Next, the GRC examines whether there was an unlawful denial of access pursuant to OPRA. Although the Custodian in this complaint states that he responded to the Complainant on June 23, 2008, stating that no authorized payments were made to Schenck, Price, Smith & King, LLC, the Custodian subsequently certified that at the time of the Complainant's OPRA request, the BOE was in possession of a responsive record in the form of a check dated February 28, 2008. Regardless of whether the payment made to Schenck, Price, Smith & King, LLC was made in error, a check meeting the criteria set forth in the OPRA request still existed at the time of the Complainant's request and should have been provided to the Complainant.

Therefore, because the Custodian certified that a responsive record existed at the time of the Complainant's OPRA request, the Custodian has unlawfully denied access to the check dated February 28, 2008. The Custodian shall disclose the requested check with appropriate redactions, if any, and a redaction index detailing the general nature of the information redacted and the lawful basis for such redactions as required by N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-5.g.

Additionally, the Custodian states in the SOI that a second check dated June 4, 2008 was erroneously submitted to Schenck, Price, Smith & King, LLC; however, the GRC declines to order disclosure of this check because it was created after the date on which the Complainant submitted his OPRA request. *See Blau v. Union County*, GRC Complaint No. 2003-75 (January 2005)(holding that a requestor cannot submit an OPRA request for copies of records on a continuous basis, but must submit an OPRA request for each set of records sought.)

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<sup>5</sup> It is the GRC's position that a custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

**Whether the Custodian's unlawful denial of access to the requested check 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 for payments made by Englewood Public Schools to Schenck, Price, Smith & King, LLC, either granting access, denying access, seeking clarification or properly requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's requests 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 certified that a responsive record existed at the time of the Complainant's OPRA request, the Custodian has unlawfully denied access to the check dated February 28, 2008. **The Custodian shall disclose the requested check with appropriate redactions, if any, and a redaction index detailing the general nature of the information redacted and the lawful basis for such redactions as required by N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-5.g.**
3. **The Custodian shall comply with Item No. 2 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<sup>6</sup>, to the Executive Director.**
4. 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

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<sup>6</sup> "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."  
David G. Matthews v. Englewood Public Schools, Board of Education (Bergen), 2008-134 – Findings and Recommendations of the Executive Director 6

Approved By: Catherine Starghill, Esq.  
Executive Director

September 23, 2009