



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

FINAL DECISION

February 28, 2012 Government Records Council Meeting

Jesse Wolosky
Complainant

Complaint No. 2009-325

v.

Township of Sparta (Sussex)
Custodian of Record

At the February 28, 2012 public meeting, the Government Records Council (“Council”) considered the February 21, 2012 *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 a legal certification, the unredacted records requested for the *in camera* inspection and a redaction index on February 3, 2012. Therefore, the Custodian timely complied with the Council’s January 31, 2012 Interim Order.
2. The GRC’s *in camera* examination of the “Tax Sale Certificates” portion of the January 27, 2009 executive session minutes revealed that the Custodian lawfully redacted the January 27, 2009 executive session minutes because the redacted material contains a description of events which concern anticipated litigation; this material is therefore exempt from disclosure under OPRA pursuant to N.J.S.A. 10:4-12(b)(7) and N.J.S.A. 47:1A-9.a.
3. The Custodian violated N.J.S.A. 47:1A-5.g. by failing to provide a specific lawful basis for the redactions. However, the Custodian timely complied with the Council’s January 31, 2012 Interim Order. Furthermore, the Custodian lawfully redacted the “Tax Sale Certificate” section of the January 27, 2009 executive session minutes because it contained a description of events which concern anticipated litigation. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.
4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council’s January 31, 2012 Interim Order, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or



otherwise) in the Custodian's conduct. Specifically, the Custodian's denial of access to the requested records was lawful because the "Tax Sale Certificates" section of the executive session minutes contained description of events which concern anticipated litigation pursuant to N.J.S.A. 10:4-12(b)(7) and N.J.S.A. 47:1A-1.1. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Therefore, the Complainant is not 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*.

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 28th Day of February, 2012

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Denise Parkinson Vetti, Esq., Secretary
Government Records Council

Decision Distribution Date: March 2, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director
February 28, 2012 Council Meeting**

**Jesse Wolosky¹
Complainant**

GRC Complaint No. 2009-325

v.

**Township of Sparta (Sussex)²
Custodian of Records**

Records Relevant to Complaint: Approved governing body executive session minutes from June 1, 2008 through June 30, 2009.³

Request Made: July 1, 2009

Response Made: July 10, 2009

Custodian: Mary Coe

GRC Complaint Filed: December 16, 2009⁴

Records Submitted for *In Camera* Examination: “Tax Sale Certificates” section for the January 27, 2009 executive session minutes.

Background

January 31, 2012

Government Records Council’s Interim Order. At the January 31, 2012 public meeting, the Government Records Council (“Council”) considered the January 24, 2012 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 response to the Complainant’s OPRA request was insufficient because the Custodian failed to set forth a specific lawful basis for redactions made to the approved executive session minutes from June 1, 2008 through June 30, 2009, pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (December 2008).
2. 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 the “Tax Sale Certificates” section for the January 27, 2009 executive session minutes in

¹ Represented by Walter M. Luers, Esq. (Clinton, NJ).

² Represented by Richard A. Stein, Esq., of Laddey, Clark & Ryan, Attorneys at Law (Sparta, NJ).

³ The Complainant requests additional records not at issue in this complaint.

⁴ The GRC received the Denial of Access Complaint on said date.

order to determine the validity of the Custodian's assertion that the records contain attorney client privileged material exempt from disclosure as stated by the Custodian pursuant to N.J.S.A. 47:1A-1.1.

3. **The Custodian must deliver⁵ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see #2 above), a document or redaction index⁶, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4⁷, that the record 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.**
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.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

February 1, 2012

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

February 3, 2012

Certification of the Custodian in response to the Council's Interim Order with the following attaching the "Tax Sale Certificates" section for the January 27, 2009 executive session minutes. The Custodian certifies that in compliance with Paragraph No. 3 of the Interim Order she provided nine (9) copies of the January 27, 2009 executive session minutes, regarding the "Tax Sale Certificates" without redactions along with a redaction index. The Custodian also certifies that the "Tax Sale Certificates" section was redacted pursuant to N.J.S.A. 10:4-12(b)(7) and N.J.S.A. 47:1A-1.1.

Analysis

Whether the Custodian complied with the Council's January 31, 2012 Interim Order?

At its January 31, 2012 public meeting, the Council determined that because the Custodian has asserted that the requested records were lawfully redacted because such information contained attorney client privileged 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

⁵ The *in camera* records 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.

⁶ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁷ "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."

(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 record was properly denied.

The Council therefore ordered the Custodian to deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted record, 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 record provided is the record 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 on February 8, 2012.

The Custodian provided the GRC with a legal certification, the unredacted records requested for the *in camera* inspection and a redaction index on February 3, 2012. Therefore, the Custodian timely complied with the Council's January 31, 2012 Interim Order.

Whether the Custodian unlawfully denied the Complainant access to the Tax Sale Certificates Section of the January 27, 2009 Executive Session Minutes?

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* ...A government record shall not include any record within the attorney-client privilege." (Emphasis added.) N.J.S.A. 47:1A-1.1.

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

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

The Custodian asserted that she lawfully redacted the "Tax Sale Certificates" section of the January 27, 2009 executive session minutes because it contained attorney-client privileged material. The Custodian certified that the "Tax Sale Certificates" section referred to by Complainant's Counsel concerned tax sale certificates that the Tax Collector sold to the Complainant against four (4) new lots in Sparta Township. The Custodian also certified that the property owner failed to record the subdivision with the Sussex County Clerk's Office. Thus, the Custodian asserted that the Tax Collector sold tax sale certificates against lots which did not legally exist. The Custodian also asserted that the issue regarding how the Township should handle the invalid tax sale certificates sold to the Complainant required

legal advice from the Township Attorney. Conversely, the Complainant asserted that he was the lien holder on three (3) out of four (4) of the tax sale certificates that were being discussed in the executive session on January 27, 2009.

The GRC conducted an *in camera* examination on the submitted record. 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> Examination⁸
Executive Session Minutes	January 27, 2009	Second paragraph under the section heading "Tax Sale Certificates"	<u>N.J.S.A.</u> 10:4-12(b)(7) (pending or anticipated litigation or contract negotiation in which the public body is, or may become a party); <u>N.J.S.A.</u> 47:1A-1.	The redacted material contains a description of events which concern anticipated litigation; this material is therefore exempt from disclosure under OPRA pursuant to <u>N.J.S.A.</u> 10:4-12(b)(7); <u>N.J.S.A.</u> 47:1A-9.a.

⁸ **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.

Thus, the Custodian lawfully redacted the “Tax Sale Certificates” portion of the January 27, 2009 executive session minutes because The redacted material contained a description of events which concern anticipated litigation; and therefore exempt from disclosure under OPRA pursuant to N.J.S.A. 10:4-12(b)(7) and N.J.S.A. 47:1A-9.a.

Whether the Custodian’s insufficient response to the Complainant’s OPRA request 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 (Felder 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).

The evidence of record indicates that the Complainant filed his OPRA request on July 1, 2009. The evidence of record also indicates that the Custodian responded to the Complainant’s OPRA request in writing on July 10, 2009, and sought an extension of time to provide the records until July 22, 2010. The Custodian provided copies of the approved executive session minutes from June 1, 2008 through June 30, 2009 with redactions on July 22, 2010. However the Custodian did not provide a specific lawful basis for each redaction.

The Custodian violated N.J.S.A. 47:1A-5.g. by failing to provide a specific lawful basis for the redactions. However, the Custodian timely complied with the Council’s January 31, 2012 Interim Order. Furthermore, the Custodian lawfully redacted the “Tax Sale

Certificate” section of the January 27, 2009 executive session minutes because it contained a description of events which concern anticipated litigation. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

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

OPRA provides that:

“[a] person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:

- institute a proceeding to challenge the custodian's decision by filing an action in Superior Court...; or
- in lieu of filing an action in Superior Court, file a complaint with the Government Records Council...

A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6.

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

In Teeters, the complainant appealed from a final decision of the Government Records Council which denied an award for attorney's fees incurred in seeking access to certain public records via two complaints she filed under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7.f., against the Division of Youth and Family Services (“DYFS”). The records sought involved an adoption agency having falsely advertised that it was licensed in New Jersey. DYFS eventually determined that the adoption agency violated the licensing rules and reported the results of its investigation to the complainant. The complainant received the records she requested upon entering into a settlement with DYFS. The court found that the complainant engaged in reasonable efforts to pursue her access rights to the records in question and sought attorney assistance only after her self-filed complaints and personal efforts were unavailing. *Id.* at 432. With that assistance, she achieved a favorable result that reflected an alteration of position and behavior on DYFS’s part. *Id.* As a result, the complainant was a prevailing party entitled to an award of a reasonable attorney's fee. Accordingly, the Court remanded the determination of reasonable attorney’s fees to the GRC for adjudication.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct.” Mason, *supra*, at 71, (quoting Buckhannon Board & Care Home v. West Virginia Department of Health & Human Resources, 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court stated that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” (quoting Black’s Law Dictionary 1145 (7th ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties.” *Id.* at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863, but also over concern that the catalyst theory would spawn extra litigation over attorney’s fees. *Id.* at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

As the New Jersey Supreme Court noted in Mason, Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, *citing Teeters*, *supra*, 387 N.J. Super. at 429; *see, e.g., Baer v. Klagholz*, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), *certif. denied*, 174 N.J. 193 (2002). “But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” 196 N.J. at 73 (citations omitted).

The Mason Court then examined the catalyst theory within the context of New Jersey law, stating that:

“New Jersey law has long recognized the catalyst theory. In 1984, this Court considered the term “prevailing party” within the meaning of the federal Civil Rights Attorney’s Fees Awards Act of 1976, 42 U.S.C.A. § 1988. Singer v. State, 95 N.J. 487, 495, *cert. denied*, New Jersey v. Singer, 469 U.S. 832, 105 S. Ct. 121, 83 L. Ed. 2d 64 (1984). The Court adopted a two-part test espousing the catalyst theory, consistent with federal law at the time: (1) there must be “a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved;” in other words, plaintiff’s efforts must be a “necessary and important factor in obtaining the relief,” *Id.* at 494-95, 472 A.2d 138 (internal quotations and citations omitted); and (2) “it must be shown that the relief ultimately secured by plaintiffs had a basis in law,” *Id.* at 495. *See also North Bergen Rex Transport v. TLC*, 158 N.J. 561, 570-71 (1999)(applying Singer fee-shifting test to commercial contract).

Also prior to Buckhannon, the Appellate Division applied the catalyst doctrine in the context of the Law Against Discrimination, N.J.S.A. 10:5-1 to -49, and the Americans with Disabilities Act, 42 U.S.C.A. §§ 12101-12213. Warrington v. Vill. Supermarket, Inc., 328 N.J. Super. 410 (App. Div. 2000). The Appellate Division explained that “[a] plaintiff is considered a prevailing party ‘when actual relief on the merits of [the] claim materially alters the relationship between the parties by modifying the defendant’s behavior in a

way that directly benefits the plaintiff." *Id.* at 420 (quoting Farrar v. Hobby, 506 U.S. 103, 111-12, 113 S. Ct. 566, 573, 121 L. Ed. 2d 494, 503 (1992)); see also Szczepanski v. Newcomb Med. Ctr., 141 N.J. 346, 355 (1995) (noting that Hensley v. Eckerhart "generously" defines "a prevailing party [a]s one who succeeds 'on any significant issue in litigation [that] achieves some of the benefit the parties sought in bringing suit'" (quoting Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933, 1938, 76 L. Ed. 2d 40, 50 (1983))). The panel noted that the "form of the judgment is not entitled to conclusive weight"; rather, courts must look to whether a plaintiff's lawsuit acted as a catalyst that prompted defendant to take action and correct an unlawful practice. Warrington, *supra*, 328 N.J. Super. at 421. A settlement that confers the relief sought may still entitle plaintiff to attorney's fees in fee-shifting matters. *Id.* at 422.

This Court affirmed the catalyst theory again in 2001 when it applied the test to an attorney misconduct matter. Packard-Bamberger, *supra*, 167 N.J. at 444. In an OPRA matter several years later, New Jerseyans for a Death Penalty Moratorium v. New Jersey Department of Corrections, 185 N.J. 137, 143-44 (2005)(NJDPM), this Court directed the Department of Corrections to disclose records beyond those it had produced voluntarily. In ordering attorney's fees, the Court acknowledged the rationale underlying various fee-shifting statutes: to insure that plaintiffs are able to find lawyers to represent them; to attract competent counsel to seek redress of statutory rights; and to "even the fight" when citizens challenge a public entity. *Id.* at 153.

After Buckhannon, and after the trial court's decision in this case, the Appellate Division decided Teeters. The plaintiff in Teeters requested records from the Division of Youth and Family Services (DYFS), which DYFS declined to release. 387 N.J. Super. at 424. After the GRC preliminarily found in plaintiff's favor, the parties reached a settlement agreement leaving open whether plaintiff was a "prevailing party" under OPRA. *Id.* at 426-27.

The Appellate Division declined to follow Buckhannon and held that plaintiff was a "prevailing party" entitled to reasonable attorney's fees; in line with the catalyst theory, plaintiff's complaint brought about an alteration in DYFS's position, and she received a favorable result through the settlement reached. *Id.* at 431-34. In rejecting Buckhannon, the panel noted that "New Jersey statutes have a different tone and flavor" than federal fee-shifting laws. *Id.* at 430. "Both the language of our statutes and the terms of court decisions in this State dealing with the issue of counsel fee entitlements support a more indulgent view of petitioner's claim for an attorney's fee award than was allowed by the majority in Buckhannon ... " *Id.* at 431, 904 A.2d 747. As support for this proposition, the panel surveyed OPRA, Packard-Bamberger, Warrington, and other cases.

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 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA." (Footnote omitted.) Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 73-76 (2008).

The Court in Mason, *supra*, at 76, held that "requestors are entitled to attorney's fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) 'a factual causal nexus between plaintiff's litigation and the relief ultimately achieved'; and (2) 'that the relief ultimately secured by plaintiffs had a basis in law.' Singer v. State, 95 N.J. 487, 495, cert denied (1984)."

Pursuant to Teeters, *supra*, and the Council's January 31, 2012 Interim Order, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Specifically, the Custodian's denial of access to the requested records was lawful because the "Tax Sale Certificates" section of the executive session minutes contained description of events which concern anticipated litigation pursuant to N.J.S.A. 10:4-12(b)(7) and N.J.S.A. 47:1A-1.1. Additionally, pursuant to Mason, *supra*, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Therefore, the Complainant is not 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*.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian provided the GRC with a legal certification, the unredacted records requested for the *in camera* inspection and a redaction index on February 3, 2012. Therefore, the Custodian timely complied with the Council's January 31, 2012 Interim Order.
2. The GRC's *in camera* examination of the "Tax Sale Certificates" portion of the January 27, 2009 executive session minutes revealed that the Custodian lawfully redacted the January 27, 2009 executive session minutes because the redacted material contains a description of events which concern anticipated litigation; this material is therefore exempt from disclosure under OPRA pursuant to N.J.S.A. 10:4-12(b)(7) and N.J.S.A. 47:1A-9.a.
3. The Custodian violated N.J.S.A. 47:1A-5.g. by failing to provide a specific lawful basis for the redactions. However, the Custodian timely complied with the Council's January 31, 2012 Interim Order. Furthermore, the Custodian lawfully redacted the "Tax Sale Certificate" section of the January 27, 2009 executive session minutes because it contained a description of events which concern anticipated litigation. Additionally, the evidence of record does not indicate that

the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and the Council's January 31, 2012 Interim Order, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the Custodian's conduct. Specifically, the Custodian's denial of access to the requested records was lawful because the "Tax Sale Certificates" section of the executive session minutes contained description of events which concern anticipated litigation pursuant to N.J.S.A. 10:4-12(b)(7) and N.J.S.A. 47:1A-1.1. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Therefore, the Complainant is not 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.

Prepared By: Harlynn A. Lack, Esq.
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

February 21, 2012



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
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INTERIM ORDER

January 31, 2012 Government Records Council Meeting

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v.

Township of Sparta (Sussex)
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At the January 31, 2012 public meeting, the Government Records Council ("Council") considered the January 24, 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, finds that:

1. The Custodian's response to the Complainant's OPRA request was insufficient because the Custodian failed to set forth a specific lawful basis for redactions made to the approved executive session minutes from June 1, 2008 through June 30, 2009, pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (December 2008).
2. 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 the "Tax Sale Certificates" section for the January 27, 2009 executive session minutes in order to determine the validity of the Custodian's assertion that the records contain attorney client privileged material exempt from disclosure as stated by the Custodian pursuant to N.J.S.A. 47:1A-1.1.
3. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted record(s) (see #2 above), a document or redaction index², as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4³, that the record 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.**

¹ The *in camera* records 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 record and/or each redaction asserted and the lawful basis for the denial.

³ "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."

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.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 31st Day of January, 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: February 1, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 31, 2012 Council Meeting**

**Jesse Wolosky¹
Complainant**

GRC Complaint No. 2009-325

v.

**Township of Sparta (Sussex)²
Custodian of Records**

Records Relevant to Complaint: Approved governing body executive session minutes from June 1, 2008 through June 30, 2009.³

Request Made: July 1, 2009

Response Made: July 10, 2009

Custodian: Mary Coe

GRC Complaint Filed: December 16, 2009⁴

Background

July 1, 2009

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint in a supplement attached to an official OPRA request form.

July 10, 2009

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the sixth (6th) business day following receipt of such request. The Custodian requests additional time to complete the Complainant's OPRA request to July 22, 2009. The Custodian requests that the Complainant confirm the requested extension of time.

July 10, 2009

E-mail from the Complainant to the Custodian. The Complainant agrees to the requested extension of time to July 22, 2009 to complete his OPRA request.

July 22, 2009

E-mail from the Custodian to the Complainant. The Custodian attaches the approved executive session minutes responsive with redactions to the Complainant's OPRA request.⁵

¹ Represented by Walter M. Luers, Esq. (Clinton, NJ).

² Represented by Richard A. Stein, Esq., of Laddey, Clark & Ryan, Attorneys at Law (Sparta, NJ).

³ The Complainant requests additional records not at issue in this complaint.

⁴ The GRC received the Denial of Access Complaint on said date.

July 23, 2009

E-mail from the Complainant to the Custodian. The Complainant thanks the Custodian for the executive session minutes responsive to his request.⁶

August 9, 2009

E-mail from the Complainant's Counsel to the Custodian. Counsel thanks the Custodian for providing the Complainant with copies of the requested approved executive session minutes. Counsel states that the approved executive session minutes provided to him contain many redactions but no specific lawful basis for such redactions. Counsel informs the Custodian that OPRA requires that custodians must provide the specific legal basis for each redaction. Counsel urges the Custodian to review the approved executive session minutes again and to provide the specific legal basis for all redactions. Counsel requests that the second paragraph of the minutes dated January 27, 2009 in which "Tax Sale Certificates" were discussed be released because there is no longer a need for confidentiality. Counsel requests the Custodian to respond by August 17, 2009.

August 10, 2009

E-mail from the Custodian to Complainant's Counsel. The Custodian states that the Township Attorney reviewed the approved executive session minutes and made redactions as necessary. The Custodian also states that the Township Attorney did not provide the Custodian with the accompanying memorandum stating the specific legal basis for each redaction. The Custodian further states that she contacted the Township Attorney's office and was informed that the Township Attorney is on vacation until August 17, 2009. The Custodian requests an extension of time until August 28, 2009 to provide the Complainant with the specific lawful basis for the redactions made.

August 28, 2009

E-mail from the Custodian to the Complainant's Counsel.⁷ The Custodian states that she is enclosing copies of the approved executive session minutes with the specific legal basis for each redaction. The Custodian also states that she is sending a copy of these executive session minutes to the Complainant.

December 8, 2009

E-mail from the Complainant's Counsel to the Custodian. Counsel states that the minutes dated January 27, 2009 contain a redaction under the section labeled "Tax Sale Certificates." Counsel requests that the Custodian provide a copy of the unredacted version of that section. Counsel states that this section should not be redacted because the issue has been resolved. Counsel also states that if he does not receive an unredacted version of this section, the Complainant will file an action with the Government Records Council ("GRC").

December 14, 2009

⁵ The Custodian did not state the specific legal basis for each redaction.

⁶ The Complainant also makes additional assertions not relevant to the adjudication of this Denial of Access Complaint.

⁷ The Custodian copies the Complainant on this e-mail dated August 28, 2009.

Letter from the Custodian to Complainant's Counsel. The Custodian states that the redacted information under the section "Tax Sale Certificates" contains legal advice from the Township Attorney. The Custodian also states that pursuant to the Open Public Meetings Act ("OPMA") N.J.S.A. 10:4-12(b)(7), all matters falling within the attorney-client privilege are confidential and exempt from public disclosure. The Custodian further states that a government record shall not include any record within the attorney-client privilege pursuant to N.J.S.A. 47:1A-1.1. The Custodian additionally states that the redacted minutes which the Complainant has requested contain a summary of legal advice given by the Township Attorney to the Township Council in an executive session and are not government records subject to OPRA. The Custodian states that unlike other executive session minutes which may be subject to disclosure after the matter has been completed, attorney-client privileged material remains privileged even after the matter is completely concluded. Lastly, the Custodian states that she must therefore deny the Complainant's request for the unredacted portion of the January 27, 2009 executive session minutes.

December 16, 2009

Denial of Access Complaint filed with the GRC with the following attachments:⁸

- Complainant's OPRA request dated July 1, 2009
- E-mail from the Custodian to the Complainant dated July 22, 2009 with attachments⁹
- E-mail from the Complainant to the Custodian dated July 23, 2009
- E-mail from the Custodian to the Complainant dated July 24, 2009
- E-mail from Complainant's Counsel to the Custodian dated August 9, 2009.

Complainant's Counsel argues that the Complainant seeks access to one (1) paragraph of the executive session minutes. Counsel states the Complainant filed his OPRA request on July 1, 2009 and requested approved governing body executive session minutes from June 1, 2008 through June 30, 2009. Counsel also states that the Custodian provided redacted versions of the responsive executive session minutes on July 22, 2009, but did not state a specific lawful basis for such redactions. Counsel additionally states that he e-mailed the Custodian on August 9, 2009 demanding that the Custodian identify the specific legal basis for the redactions. Counsel states that he made a particular mention of the tax sale certificates section in the minutes dated January 27, 2009. Counsel also states that the Complainant was interested in that section was because he was the lien holder on three (3) of the four (4) of the "Tax Sale Certificates" discussed in at that meeting. Counsel further states that the Custodian provided the specific legal basis for these redactions on August 28, 2009.

Counsel states that the Complainant requested the unredacted copy of the "Tax Sale Certificates" section of the minutes dated January 27, 2009 on December 8, 2009. Counsel also states that as of the date of this complaint, the Custodian has denied access to those requested minutes. Counsel requests the GRC to investigate this Denial of Access Complaint and determine whether the Custodian unlawfully denied access to the

⁸ The Complainant includes copies of the redacted executive session minutes.

⁹ The Custodian provided the Complainant with the executive session minutes responsive to his OPRA request.

section labeled “Tax Sale Certificates” in the executive session minutes dated January 27, 2009.

The Complainant does not agree to mediate this complaint.

December 18, 2009

Request for the Statement of Information (“SOI”) sent to the Custodian.

December 22, 2009

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated July 1, 2009
- E-mail from the Custodian to the Complainant dated July 10, 2009
- E-mail from the Complainant to the Custodian dated July 10, 2009
- E-mail from the Custodian to the Complainant dated July 22, 2009
- E-mail from the Complainant to the Custodian dated July 23, 2009
- E-mail from the Custodian to the Complainant dated July 24, 2009
- E-mail from the Custodian to Complainant’s Counsel dated August 10, 2009
- E-mail from the Custodian to Complainant’s Counsel dated August 28, 2009
- E-mail from Complainant’s Counsel to the Custodian dated December 8, 2009
- Letter from the Custodian to the Complainant’s Counsel dated December 14, 2009.¹⁰

The Custodian certifies that the executive session minutes responsive to the Complainant’s OPRA request must be retained permanently in accordance with the Records Destruction Schedule established and approved by the New Jersey Department of State, Division of Archives and Records Management (“DARM”) as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).¹¹

The Custodian certifies that the executive session minutes responsive to the Complainant’s OPRA request were sent to the Township Attorney for his review and possible redactions. The Custodian also certifies that on July 10, 2009 an extension of time to July 22, 2009 was requested and granted. The Custodian further certifies that once the executive session minutes were returned to her by the Township Attorney, she e-mailed such minutes to the Complainant on July 24, 2009. The Custodian certifies that Complainant’s Counsel e-mailed the Custodian on August 9, 2009 requesting the specific legal basis for each redaction made to the executive session minutes be provided on August 17, 2009. The Custodian also certifies that on August 10, 2009 a request for an extension of time to August 28, 2009 to provide for the legal basis for each redaction was requested and granted.

The Custodian certifies that Complainant’s Counsel e-mailed the Custodian on December 8, 2009 requesting that the unredacted “Tax Sale Certificates” section of the

¹⁰ The Custodian also attaches a copy of several e-mails which are not relevant to the adjudication of this complaint.

¹¹ The Custodian did not certify as to the search undertaken to locate the executive session minutes responsive to the Complainant’s OPRA request.

minutes dated January 27, 2009 be provided because the issue requiring redaction was resolved. The Custodian also certifies that on December 14, 2009 Complainant's Counsel was informed that an unredacted copy of the minutes would not be provided because it contained attorney-client privileged material.

The Custodian certifies that the "Tax Sale Certificates" section referred to by Complainant's Counsel concerned tax sale certificates that the Tax Collector sold to the Complainant against four (4) new lots in Sparta Township. The Custodian also certifies that after the tax sale was held, it was discovered that the subdivision that authorized the new lots were never perfected. The Custodian further certifies that the property owner failed to record the subdivision with the Sussex County Clerk's Office. Thus, the Custodian asserts that the Tax Collector sold tax sale certificates against lots which did not legally exist. The Custodian argues that the issue regarding how the Township should handle the invalid tax sale certificates sold to the Complainant required legal advice from the Township Attorney. The Custodian certifies that during the executive session meeting on January 27, 2009, those tax sale certificates were discussed by Henry Underhill, Township Manager, ("Mr. Underhill) and the Township Attorney, who provided legal advice.

The Custodian argues that the Township Attorney has advised that the redactions are authorized by OPMA and OPRA. The Custodian also argues that N.J.S.A. 10:4-12 requires all meetings of public bodies to be held in open session unless one of the nine (9) exceptions to the law applies. The Custodian further argues that N.J.S.A. 10:4-12(b)(7) states:

"Any pending or anticipated litigation or contract negotiation other than in subsection b(4) herein in which the public body is, or may become a party...any matter falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer."

The Custodian argues that any government record disclosed under OPRA shall not contain attorney-client privileged information. The Custodian also argues that the issue of whether legal advice given to a public entity by its attorney should be subject to public disclosure after the legal matter has been completed has been decided by in Press of Atlantic City v. Ocean County Joint Insurance Fund, 337 N.J. Super. 480 (Law. Div. 2001).

Analysis

Whether the Custodian's response to the Complainant's OPRA request was sufficient?

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 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 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.

N.J.S.A. 47:1A-5.g. requires that a custodian provide the specific lawful basis for redactions. In Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (December 2008), the Custodian responded in a timely manner providing redacted records to the Complainant; however, the Custodian failed to provide a specific legal basis for said redactions. The Council, relying on prior decisions in Paff v. Township of Plainsboro, GRC Complaint No. 2005-29, (July 2005) (ordering the custodian to provide redacted executive session minutes with a detailed and lawful basis for each redacted part) and Schwarz v. NJ Department of Human Services, GRC Complaint No. 2004-60, (February, 2005)(setting forth the proposition that specific citations to the law that allows a denial of access are required at the time of the denial), held that:

“[t]he Custodian’s response was legally insufficient under OPRA because he failed to provide a written response setting forth a detailed and lawful basis for each redaction ... Therefore, the Custodian violated OPRA pursuant to N.J.S.A. 47:1A- 5.g. and has not borne his burden of proving the denial of access to the redacted portions was authorized by law pursuant to N.J.S.A. 47:1A-6.”

In the instant complaint the Custodian responded on the sixth (6th) business day following receipt of the Complainant's OPRA request and sought an extension of time to provide responsive records until July 22, 2010. The Custodian provided copies of the approved executive session minutes from June 1, 2008 through June 30, 2008 with redactions on July 22, 2010. However, the evidence of record indicates that the Custodian did not provide a specific lawful basis for each redaction. The Complainant states that he demanded the Custodian to identify the reasons for these redactions. The Complainant also states that that on August 28, 2009 the Custodian provided the specific reasons for these redactions.

Therefore, the Custodian's response to the Complainant's OPRA request was insufficient because the Custodian failed to set forth a specific lawful basis for redactions made to the approved executive session minutes from June 1, 2008 through June 30, 2009, pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (December 2008).

Whether the approved executive session minutes dated January 27, 2009, section entitled "Tax Sale Certificates" contain attorney client privileged material?

OPRA provides:

"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 the attorney-client privilege." N.J.S.A. 47:1A-1.1.

The Custodian provided the approved executive session minutes to the Complainant with redactions. However, as previously stated, the Custodian at the time of the response did not provide for the specific legal basis for such redactions. In his Denial of Access Complaint, the Complainant made particular mention to the "Tax Sale Certificates" section of the January 27, 2009 executive session minutes. The Complainant asserted that he was the lien holder on three (3) out of four (4) of the tax sale certificates that were being discussed in executive session on January 27, 2009. On August 28, 2009 the Custodian informed the Complainant that this portion of the minutes was redacted because it contained attorney client privileged material. Furthermore, the Custodian certified in the SOI that the issue of the tax sale certificates required legal advice by the Township Attorney.

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 GRC¹² 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:

¹² Paff v. NJ Department of Labor, Board of Review, GRC Complaint No. 2003-128 (October 2005).
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“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 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 the “Tax Sale Certificates” section for the January 27, 2009 executive session minutes in order to determine the validity of the Custodian’s assertion that the records contain attorney client privileged material exempt from disclosure as stated by the Custodian pursuant to N.J.S.A. 47:1A-1.1.

Whether the Custodian’s actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

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.

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

The Council defers analysis of whether the Complainant is a prevailing party 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 response to the Complainant's OPRA request was insufficient because the Custodian failed to set forth a specific lawful basis for redactions made to the approved executive session minutes from June 1, 2008 through June 30, 2009, pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (December 2008).
2. 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 the "Tax Sale Certificates" section for the January 27, 2009 executive session minutes in order to determine the validity of the Custodian's assertion that the records contain attorney client privileged material exempt from disclosure as stated by the Custodian pursuant to N.J.S.A. 47:1A-1.1.
3. **The Custodian must deliver¹³ to the Council in a sealed envelope nine (9) copies of the requested unredacted record(s) (see #2 above), a document or redaction index¹⁴, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4¹⁵, that the record 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.**
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.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Harlynn A. Lack, Esq.
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

January 24, 2012

¹³ The *in camera* records 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.

¹⁴ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

¹⁵ "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."