



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

June 26, 2012 Government Records Council Meeting

Richard Rivera
Complainant

Complaint No. 2010-182

v.

City of Camden (Camden)
Custodian of Record

At the June 26, 2012 public meeting, the Government Records Council (“Council”) considered the June 19, 2012 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian failed to comply with the Council’s March 27, 2010 Interim Order because the Custodian failed provide the invoice dated July 11, 2007 to the Complainant within the mandated five (5) business days from receipt of the Council’s Interim Order. Further, when the Custodian provided the invoice dated July 11, 2007 to the Complainant on April 23, 2012, he failed to deliver said invoice in the Complainant’s preferred method of delivery. See N.J.S.A. 47:1A-5.d., O’Shea v. Township of Fredon (Sussex), GRC Complaint Number 2007-251 (February 2008) (custodian’s response was insufficient because it did not address [the complainant’s] preference for e-mailed records) and Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008) (the complainant requested that the records be provided via e-mail or facsimile, and the custodian failed to address the method of delivery in his response to the OPRA request)
2. The Custodian and Ms. Valdez violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to respond in writing to the Complainant’s April 27, 2010 and July 9, 2010 OPRA requests within the statutorily mandated seven (7) business days. The Custodian and Ms. Valdez also violated N.J.S.A. 47:1A-5.e. by failing to immediately grant access to the invoices responsive to the Complainant’s OPRA requests. Ms. Valdez violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i by failing to provide an anticipated date upon which the invoices responsive to the Complainant’s OPRA request dated July 9, 2010 would be provided. The Custodian also violated N.J.S.A. 47:1A-5.g. because he failed to set forth the specific legal basis for redactions made to the invoices from 2008 through 2009 responsive to the Complainant’s OPRA request dated April 27, 2010. The Custodian failed to comply with the Council’s January 31, 2012 Interim Order because the Custodian delivered the records for the *in camera* review via facsimile and not via overnight mail, regular mail, or hand-delivery, and further, the Custodian did not include all of the invoices responsive to the Complainant’s OPRA requests to the GRC for the *in camera* review. Additionally, the Custodian failed to comply with the Council’s March



27, 2012 Interim Order because he failed to provide the invoice dated July 11, 2007 to the Complainant within five (5) business days. The Custodian also failed to comply with the Council's March 27, 2012 Interim Order because the Custodian provided the invoice dated July 11, 2007, to the Complainant on April 23, 2012 he failed to comply with the Complainant's preferred method of delivery. Lastly, the Custodian failed to comply with the GRC's e-mail dated April 20, 2012 because he failed to provide the GRC with the certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4. The evidence of record does not indicate that the Custodian's or Ms. Valdez's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, it is concluded that neither the Custodian's nor Ms. Valdez'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.

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 26th Day of June, 2012

Steven F. Ritardi, Esq., Acting 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: June 27, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
June 26, 2012 Council Meeting**

**Richard Rivera¹
Complainant**

GRC Complaint No. 2010-182

v.

**City of Camden (Camden)²
Custodian of Records**

April 27, 2010: On-site inspection of the following records:

1. Contracts, agreements, and letters of understanding regarding the hiring, retention and services of Ms. Caryl Amana, Esq. (“Ms. Amana”) from 2000 through the present. Documents shall include compensation to Ms. Amana and related companies.

2. Monthly billing invoices from Ms. Amana for 2008 and 2009 detailing the work and services provided either as an individual or through a related firm or company.

July 9, 2010: Copies of monthly billing invoices from Ms. Amana for 2007 and 2010 detailing the work and services she has provided either in an individual capacity or through a related firm or company.

Request Made: April 27, 2010 and July 9, 2010

Response Made: May 14, 2010 and July 22, 2010

Custodian: Luis Pastoriza

GRC Complaint Filed: August 2, 2010³

Background

March 27, 2012

Government Records Council’s (“Council”) Interim Order. At its March 27, 2012 public meeting, the Council considered the March 14, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian failed to fully comply with the Council’s January 31, 2012 Interim Order because the Custodian sent these records via facsimile⁴ and

¹ No legal representation listed on record.

² Represented by Jason Asuncion, Esq. (Camden, NJ).

³ The GRC received the Denial of Access Complaint on said date.

not via overnight mail, regular mail, or hand-delivery as required by the Council's Interim Order. Furthermore, the Custodian did not include all the invoices responsive to the Complainant's OPRA request for the *in camera* review.

2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**
3. The Custodian's response to the Complainant's OPRA request Item No. 2 is insufficient pursuant to N.J.S.A. 47:1A- 5.g., O'Shea v. Township of Fredon (Sussex), GRC Complaint Number 2007-251 (February 2008) and Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008), because he failed to address the Complainant's preferred method of delivery (on-site inspection), instead providing the Complainant with copies of the records responsive.
4. The Council defers analysis of whether the Custodian and Ms. Valdez knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

March 29, 2012

Council's Interim Order distributed to the parties.

April 3, 2012

Custodian's response to the Council's Interim Order. The Custodian certifies that he received the Council's Order on March 30, 2012. The Custodian encloses a copy of the unredacted invoice from Ms. Amana dated July 11, 2007. The Custodian certifies that by providing this invoice he is in compliance with the Council's Interim Order.⁵

April 20, 2012

E-mail from the GRC to Custodian's Counsel. The GRC confirms a telephone conversation on April 20, 2012 in which Counsel informed the GRC that the Custodian did not provide copies of the invoice dated July 11, 2007 to the Complainant. The GRC instructs Counsel to have the Custodian provide the Complainant with a copy of the invoice dated July 11, 2007, pursuant to the Council's Interim Order, within three (3) business days. The GRC also requests that the Custodian provide the GRC with certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4.

⁴ A facsimile submission is not appropriate because the custodian cannot include a sealed envelope, as is required for the transmission of the *in camera* documents.

⁵ The Custodian only provided a copy of the invoice dated July 11, 2007 only to the GRC and failed to provide a copy to the Complainant pursuant to the Council's Interim Order.

April 23, 2012

Letter from the Custodian to the Complainant. The Custodian states that he is sending the Complainant unredacted copies of the invoices responsive to his OPRA requests.⁶ The Custodian also includes a copy of the invoice dated July 11, 2007.⁷

April 23, 2012

E-mail from Ms. Yenise Valdez (“Ms. Valdez”), Data Clerk to the GRC. Ms. Valdez attaches a copy of the letter dated April 23, 2012 and the invoices responsive to the Complainant’s OPRA requests, including a copy of the invoice dated July 11, 2007 sent to the Complainant.⁸

May 23, 2012

E-mail from the GRC to the Complainant. The GRC states that it has come to the GRC’s attention that the Complainant was not provided with a copy of the unredacted July 11, 2007 invoice as required by the Council’s March 27, 2012 Interim Order. The GRC also states that the Custodian provided copies of the invoices responsive to the Complainant’s request to the GRC. The GRC attaches copies of the invoices provided to it by the Custodian in response to the March 27, 2012 Interim Order, including the unredacted July 11, 2007 invoice.

Analysis**Whether the Custodian complied with the Council’s March 27, 2012 Interim Order?**

The Council’s March 27, 2012 Interim Order required the Custodian to provide the Complainant with a copy of the invoice dated July 11, 2007 without redacting the part of the last entry noted as, “05/27/074 – Prep. Legal Memo” and “(7.2).” However, the remaining information contained therein is exempt from disclosure as attorney client privilege material pursuant to N.J.S.A. 47:1A-1.1. In the Custodian’s original response, the Custodian redacted the last entry in its entirety. The Council’s Interim Order also required the Custodian to provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4 to the Executive Director.

The GRC confirmed with Custodian’s Counsel via e-mail on April 20, 2012 that the Custodian sent a copy of the invoice dated July 11, 2007 to the GRC and did not provide same to the Complainant. On April 20, 2012, the GRC therefore required the Custodian to provide such invoice to the Complainant. On April 23, 2012, the Custodian provided to the Complainant via U.S. Postal Service Certified Mail the invoice dated July 11, 2007 with the other invoices responsive to the Complainant’s OPRA requests. However, the certified mail receipt indicates that the Complainant refused delivery on

⁶ In the Complainant’s original OPRA request, he requested copies of the invoices responsive to his request either via e-mail or facsimile. The Complainant stated that he did not want any communications via U.S. Mail.

⁷ The Custodian sends the Complainant copies of these records via U.S. Postal Service Certified Mail, tracking no. 70101670000213556130. However, the mail receipt indicates that the Complainant refused delivery on May 5, 2012 and the records were returned to the Custodian on May 16, 2012.

⁸ Ms. Valdez does not include the Custodian’s certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4.

May 5, 2012 and the invoices were returned to the Custodian on May 16, 2012. In his original OPRA request dated July 9, 2010, the Complainant stated that his preferred method of delivery was either by e-mail or facsimile and that he did not want any communications via first class mail.

Therefore, the Custodian failed to comply with the Council's March 27, 2010 Interim Order because the Custodian failed provide the invoice dated July 11, 2007 to the Complainant within the mandated five (5) business days from receipt of the Council's Interim Order. Further, when the Custodian provided the invoice dated July 11, 2007 to the Complainant on April 23, 2012, he failed to deliver said invoice in the Complainant's preferred method of delivery. See N.J.S.A. 47:1A-5.d., O'Shea v. Township of Fredon (Sussex), GRC Complaint Number 2007-251 (February 2008) (custodian's response was insufficient because it did not address [the complainant's] preference for e-mailed records) and Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008) (the complainant requested that the records be provided via e-mail or facsimile, and the custodian failed to address the method of delivery in his response to the OPRA request).

However, the GRC declines to order the Custodian to provide such records to the Complainant because the GRC provided same to the Complainant via e-mail on May 23, 2012.

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

OPRA states that:

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

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

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

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001); the Richard Rivera v. City of Camden (Camden), 2010-182 – Supplemental Findings and Recommendations of the Executive Director

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)).

The Custodian and Ms. Valdez violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to respond in writing to the Complainant's April 27, 2010 and July 9, 2010 OPRA requests within the statutorily mandated seven (7) business days. The Custodian and Ms. Valdez also violated N.J.S.A. 47:1A-5.e. by failing to immediately grant access to the invoices responsive to the Complainant's OPRA requests. Ms. Valdez violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i by failing to provide an anticipated date upon which the invoices responsive to the Complainant's OPRA request dated July 9, 2010 would be provided. The Custodian also violated N.J.S.A. 47:1A-5.g. because he failed to set forth the specific legal basis for redactions made to the invoices from 2008 through 2009 responsive to the Complainant's OPRA request dated April 27, 2010. The Custodian failed to comply with the Council's January 31, 2012 Interim Order because the Custodian delivered the records for the *in camera* review via facsimile and not via overnight mail, regular mail, or hand-delivery, and further, the Custodian did not include all of the invoices responsive to the Complainant's OPRA requests to the GRC for the *in camera* review. Additionally, the Custodian failed to comply with the Council's March 27, 2012 Interim Order because he failed to provide the invoice dated July 11, 2007 to the Complainant within five (5) business days. The Custodian also failed to comply with the Council's March 27, 2012 Interim Order because the Custodian provided the invoice dated July 11, 2007, to the Complainant on April 23, 2012 he failed to comply with the Complainant's preferred method of delivery. Lastly, the Custodian failed to comply with the GRC's e-mail dated April 20, 2012 because he failed to provide the GRC with the certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4. Nevertheless, the evidence of record does not indicate that the Custodian's or Ms. Valdez's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, it is concluded that neither the Custodian's nor Ms. Valdez'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.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council's March 27, 2010 Interim Order because the Custodian failed provide the invoice dated July 11, 2007 to the Complainant within the mandated five (5) business days from receipt of the Council's Interim Order. Further, when the Custodian provided the invoice dated July 11, 2007 to the Complainant on April 23, 2012, he failed to deliver said invoice in the Complainant's preferred method of delivery. See N.J.S.A. 47:1A-5.d., O'Shea v. Township of Fredon (Sussex), GRC Complaint Number 2007-251

(February 2008) (custodian's response was insufficient because it did not address [the complainant's] preference for e-mailed records) and Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008) (the complainant requested that the records be provided via e-mail or facsimile, and the custodian failed to address the method of delivery in his response to the OPRA request)

2. The Custodian and Ms. Valdez violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. by failing to respond in writing to the Complainant's April 27, 2010 and July 9, 2010 OPRA requests within the statutorily mandated seven (7) business days. The Custodian and Ms. Valdez also violated N.J.S.A. 47:1A-5.e. by failing to immediately grant access to the invoices responsive to the Complainant's OPRA requests. Ms. Valdez violated N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i by failing to provide an anticipated date upon which the invoices responsive to the Complainant's OPRA request dated July 9, 2010 would be provided. The Custodian also violated N.J.S.A. 47:1A-5.g. because he failed to set forth the specific legal basis for redactions made to the invoices from 2008 through 2009 responsive to the Complainant's OPRA request dated April 27, 2010. The Custodian failed to comply with the Council's January 31, 2012 Interim Order because the Custodian delivered the records for the *in camera* review via facsimile and not via overnight mail, regular mail, or hand-delivery, and further, the Custodian did not include all of the invoices responsive to the Complainant's OPRA requests to the GRC for the *in camera* review. Additionally, the Custodian failed to comply with the Council's March 27, 2012 Interim Order because he failed to provide the invoice dated July 11, 2007 to the Complainant within five (5) business days. The Custodian also failed to comply with the Council's March 27, 2012 Interim Order because the Custodian provided the invoice dated July 11, 2007, to the Complainant on April 23, 2012 he failed to comply with the Complainant's preferred method of delivery. Lastly, the Custodian failed to comply with the GRC's e-mail dated April 20, 2012 because he failed to provide the GRC with the certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4. The evidence of record does not indicate that the Custodian's or Ms. Valdez's violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, it is concluded that neither the Custodian's nor Ms. Valdez'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.

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

Approved By: Karyn Gordon, Esq.
Acting Executive Director

June 19, 2012



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

INTERIM ORDER

March 27, 2012 Government Records Council Meeting

Richard Rivera
Complainant

Complaint No. 2010-182

v.

City of Camden (Camden)
Custodian of Record

At the March 27, 2012 public meeting, the Government Records Council (“Council”) considered the March 20, 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 failed to fully comply with the Council’s January 31, 2012 Interim Order because the Custodian sent these records via facsimile¹ and not via overnight mail, regular mail, or hand-delivery as required by the Council’s Interim Order. Furthermore, the Custodian did not include all the invoices responsive to the Complainant’s OPRA request for the *in camera* review.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the table below within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**

¹ A facsimile submission is not appropriate because the custodian cannot include a sealed envelope, as is required for the transmission of the *in camera* documents.

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian's Explanation/ Citation for Non-disclosure or Redactions	Findings of the In Camera Examination²
Invoice from Caryl M. Amana, Esq., to City of Camden	July 11, 2007	Last entry redacted in its entirety	Material redacted is exempt from disclosure under OPRA as attorney-client privileged material pursuant to <u>N.J.S.A. 47:1A-1.1</u> .	The following material is not subject to the attorney client privilege as it reveals no privileged attorney client communications, strategy, or litigation information. As such, this material must be disclosed: "05/27/07 – Prep. Legal Memo" and "(7.2)" The remaining information is exempt from disclosure under OPRA pursuant to <u>N.J.S.A. 47:1A-1.1</u> as attorney client privileged material.

Thus, the Custodian unlawfully redacted the invoice dated July 11, 2007 because "05/27/07 – Prep. Legal Memo" and "(7.2)" is not subject to the attorney client privilege as such

² **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.

information reveals no privileged attorney client communications, strategy, or litigation information.

3. The Custodian's response to the Complainant's OPRA request Item No. 2 is insufficient pursuant to N.J.S.A. 47:1A- 5.g., O'Shea v. Township of Fredon (Sussex), GRC Complaint Number 2007-251 (February 2008) and Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008), because he failed to address the Complainant's preferred method of delivery (on-site inspection), instead providing the Complainant with copies of the records responsive.
4. The Council defers analysis of whether the Custodian and Ms. Valdez 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 27th Day of March, 2012

Robin Berg Tabakin, Chair
Government Records Council

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

Catherine Starghill, Executive Director
Government Records Council

Decision Distribution Date: March 29, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director
March 27, 2012 Council Meeting**

**Richard Rivera¹
Complainant**

GRC Complaint No. 2010-182

v.

**City of Camden (Camden)²
Custodian of Records**

April 27, 2010: On-site inspection of the following records:

1. Contracts, agreements, and letters of understanding regarding the hiring, retention and services of Ms. Caryl Amana, Esq. (“Ms. Amana”) from 2000 through the present. Documents shall include compensation to Ms. Amana and related companies.
2. Monthly billing invoices from Ms. Amana for 2008 and 2009 detailing the work and services provided either as an individual or through a related firm or company.

July 9, 2010: Copies of monthly billing invoices from Ms. Amana for 2007 and 2010 detailing the work and services she has provided either in an individual capacity or through a related firm or company.

Request Made: April 27, 2010 and July 9, 2010

Response Made: May 14, 2010 and July 22, 2010

Custodian: Luis Pastoriza

GRC Complaint Filed: August 2, 2011³

Records Submitted for *In Camera* Examination: Monthly billing invoice from Ms. Amana dated July 11, 2007.

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 No legal representation listed on record.

² Represented by Jason Asuncion, Esq. (Camden, NJ).

³ The GRC received the Denial of Access Complaint on said date.

1. The Custodian's and Ms. Valdez's failure to respond in writing to the Complainant's April 27, 2010 and July 9, 2010 OPRA requests, respectively, 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 (Morris), GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Further, because the Custodian and Ms. Valdez failed to immediately grant access to the invoices responsive to both of the Complainant's OPRA requests, the Custodian and Ms. Valdez have violated N.J.S.A. 47:1A-5.e. See Herron v. Township of Montclair (Essex), GRC Complaint No. 2006-178 (February 2007).
2. The Custodian's response to the Complainant's OPRA request dated April 27, 2010 was insufficient because the Custodian failed to set forth a specific lawful basis for redactions made to the monthly billing invoices for from Ms. Amana for 2008 and 2009, pursuant to N.J.S.A. 47:1A-5.g. and Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (December 2008).
3. Ms. Valdez's response to the Complainant's OPRA request dated July 9, 2010 was insufficient because she failed to provide an anticipated date upon which the records responsive to the Complainant's OPRA request dated July 9, 2010 would be provided to the Complainant, thus violating OPRA pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Hobbs v. Township of Hillside (Union), GRC Complaint No. 2009-286 (November 2010).
4. The Custodian provided the records responsive to request Item No. 1, contracts, agreements and letters of understanding after the statutorily mandated seven (7) business days. However, the Complainant's request for "documents shall include compensation to Ms. Amana and related companies" is overly broad and unclear because it would require the Custodian to conduct research to locate and identify responsive records. The term "related companies" does not identify with reasonable clarity specific government records. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
5. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of all the monthly billing invoices from Ms. Amana for 2007 through 2010 responsive to the Complainant's OPRA requests dated April 27, 2010 and July 9, 2010 in order to determine the validity of the Custodian's assertion that the redacted portions of the records constitute attorney-client privilege information pursuant to N.J.S.A. 47:1A-1.1.

6. **The Custodian must deliver⁴ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see #5 above), a document or redaction index⁵, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4⁶, that the records 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.**
7. The Council defers analysis of whether the Custodian properly provided the Complainant copies of the records responsive to request Item No. 2, rather than providing the Complainant with an on-site inspection of such records, pending the Council's Interim Order.
8. 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.

February 1, 2012

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

February 8, 2012

Certification of the Custodian in response to the Council's Interim Order attaching an invoice from Ms. Amana dated July 11, 2007, sent via facsimile. The Custodian asserts that the last line of the responsive invoice was redacted because such information contained confidential and attorney-client privileged information.

February 8, 2012

Telephone call from the GRC to Custodian's Counsel. The GRC states that it is in receipt of the unredacted invoice dated July 11, 2007. The GRC also states that in its Order the Council requested all the monthly billing invoices from Ms. Amana for 2007 through 2010 responsive to the Complainant's OPRA requests. The GRC inquires if the July 11, 2007 is the only monthly billing invoice responsive to the request. Counsel informs the GRC that there are other monthly billing invoices, however, the July 11, 2007 invoices was the only one redacted. The GRC requests Counsel to send all the billing invoices responsive to the Complainant's request for an *in camera* review.

February 10, 2012

Letter from the Custodian to the GRC. Counsel includes nine (9) copies of the complete and unredacted records pursuant to Council's Order. The Custodian certifies that the records being provided are for the GRC's *in camera* review.

⁴ 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.

⁵ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁶ "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."

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 the redacted portion contained attorney client privileged information, the Council must determine whether the legal conclusion asserted by the Custodian is properly applied to the record at issue pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005). Therefore, the GRC must conduct an *in camera* review of the requested records to determine the validity of the Custodian's assertion that the requested 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 records, 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 records provided are the records 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 record (an invoice dated July 11, 2007) requested for the *in camera* inspection and a redaction index on February 8, 2012. However, the Custodian sent these records via facsimile and not by overnight mail, regular mail, or hand-delivered as required by the Council's Interim Order.⁷ Furthermore, although the Custodian did not include all the invoices responsive to the Complainant's OPRA request for the *in camera* review, the Custodian did provide the GRC with all the invoices responsive to the Council's Interim Order on February 10, 2012. Therefore, the Custodian failed to fully comply with the Council's January 31, 2012 Interim Order.

Whether the Custodian unlawfully redacted the monthly billing invoice from Ms. Amana dated July 11, 2007?

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*

⁷ A facsimile submission is not appropriate because the custodian cannot include a sealed envelope, as is required for the transmission of the *in camera* documents.

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 GRC notes that, although the Custodian provided the GRC with all of the invoices responsive to the Complainant’s OPRA request, the only invoice that was provided to the Complainant with redactions is dated July 11, 2007, although the Custodian failed to make this fact clear at the time of the Council’s Interim Order. The Custodian asserts that he lawfully redacted the invoice dated July 11, 2007 because it contains attorney client privileged information. The Custodian also asserted that the attorney-client privilege applies whenever confidential legal advice is rendered to the City whether by private counsel or City Attorney.

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 In Camera Examination⁸
Invoice from Caryl M. Amana, Esq., to City of Camden	July 11, 2007	Last entry redacted in its entirety	Material redacted is exempt from disclosure under OPRA as attorney-client privileged material pursuant to <u>N.J.S.A.</u> 47:1A-	The following material is not subject to the attorney client privilege as it reveals no privileged attorney client communications, strategy, or

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.

			1.1.	litigation information. As such, this material must be disclosed: “05/27/07 – Prep. Legal Memo” and “(7.2)” The remaining information is exempt from disclosure under OPRA pursuant to <u>N.J.S.A. 47:1A-1.1</u> as attorney client privileged material.
--	--	--	------	--

Thus, the Custodian unlawfully redacted the invoice dated July 11, 2007 because “05/27/07 – Prep. Legal Memo” and “(7.2)” is not subject to the attorney client privilege as such information reveals no privileged attorney client communications, strategy, or litigation information.

Whether the Custodian sufficiently responded to the Complainant’s OPRA request by providing the Complainant with copies of the records responsive to request Item No. 2 rather than an on-site inspection of such records?

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.

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.

Although the Complainant did not raise the issue of whether the Custodian sufficiently responded to the Complainant’s OPRA request, the GRC must address this issue.

The Complainant's OPRA request Item No. 2 identified the preferred method of delivery as an on-site inspection. However, the evidence of record indicates that the Custodian provided the Complainant with unredacted copies of these records instead of an on-site inspection.

In O'Shea v. Township of Fredon (Sussex), GRC Complaint Number 2007-251 (February 2008), the complainant contended that the custodian's response to his OPRA request was insufficient because it did not address his preference for e-mailed records over paper copies via regular mail. The Council held that "[a]ccording to [the] language of N.J.S.A. 47:1A-5.g., the custodian was given two ways to comply and should have, therefore, responded acknowledging the complainant's preferences with a sufficient response for each."⁹ The Council further held that "the Custodian's response is insufficient because she failed to specifically address the Complainant's preference for receipt of records."

Moreover, in Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008), the complainant requested that the records be provided via e-mail or facsimile, and the custodian failed to address the method of delivery in his response to the OPRA request. Despite the fact the custodian responded in writing granting access to the requested record in a timely manner, the Council determined that the "Custodian's response [was] insufficient because she failed to specifically address the Complainant's preference for receipt of the records...[t]herefore, the Custodian...violated OPRA..." *Id.*

Here, the Custodian granted access to the records responsive to request Item No. 2 but not in the preferred method of delivery. Although the Complainant does not raise the issue of the preferred method of delivery, the Custodian's response was insufficient because he provided the Complainant with copies of the responsive records and not an on-site inspection. However, Council declines to order an on-site inspection of the records responsive to request Item No. 2, because the Custodian provided the Complainant with an unredacted version of these records. Thus, the Custodian's response to the Complainant's OPRA request was insufficient.

Therefore, the Custodian's response to the Complainant's OPRA request Item No. 2 is insufficient pursuant to N.J.S.A. 47:1A- 5.g., O'Shea, supra, and Paff, supra, because he failed to address the Complainant's preferred method of delivery (on-site inspection) and instead provided the Complainant with copies of the records responsive.

Whether the Custodian's and Ms. Valdez'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.

⁹ The Council noted that N.J.S.A. 47:1A-5.g. states that if a Custodian is "unable to comply with a request for access, then the Custodian shall indicate the specific basis" for noncompliance. In O'Shea, supra, the Complainant stated in his request that receipt of the requested records by e-mail was preferred over having to pay copying costs.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to fully comply with the Council's January 31, 2012 Interim Order because the Custodian sent these records via facsimile¹⁰ and not via overnight mail, regular mail, or hand-delivery as required by the Council's Interim Order. Furthermore, the Custodian did not include all the invoices responsive to the Complainant's OPRA request for the *in camera* review.
2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**
3. The Custodian's response to the Complainant's OPRA request Item No. 2 is insufficient pursuant to N.J.S.A. 47:1A- 5.g., O'Shea v. Township of Fredon (Sussex), GRC Complaint Number 2007-251 (February 2008) and Paff v. Borough of Sussex (Sussex), GRC Complaint Number 2008-38 (July 2008), because he failed to address the Complainant's preferred method of delivery (on-site inspection), instead providing the Complainant with copies of the records responsive.
4. The Council defers analysis of whether the Custodian and Ms. Valdez 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: Harlynn A. Lack, Esq.
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

March 20, 2012

¹⁰ A facsimile submission is not appropriate because the custodian cannot include a sealed envelope, as is required for the transmission of the *in camera* documents.



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Acting Commissioner

INTERIM ORDER

January 31, 2012 Government Records Council Meeting

Richard Rivera
Complainant

Complaint No. 2010-182

v.

City of Camden (Camden)
Custodian of Record

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 and Ms. Valdez’s failure to respond in writing to the Complainant’s April 27, 2010 and July 9, 2010 OPRA requests, respectively, 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 (Morris), GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Further, because the Custodian and Ms. Valdez failed to immediately grant access to the invoices responsive to both of the Complainant’s OPRA requests, the Custodian and Ms. Valdez have violated N.J.S.A. 47:1A-5.e. See Herron v. Township of Montclair(Essex), GRC Complaint No. 2006-178 (February 2007).
2. The Custodian’s response to the Complainant’s OPRA request dated April 27, 2010 was insufficient because the Custodian failed to set forth a specific lawful basis for redactions made to the monthly billing invoices for from Ms. Amana for 2008 and 2009, pursuant to N.J.S.A. 47:1A-5g. and Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (December 2008).
3. Ms. Valdez’s response to the Complainant’s OPRA request dated July 9, 2010 was insufficient because she failed to provide an anticipated date upon which the records responsive to the Complainant’s OPRA request dated July 9, 2010 would be provided to the Complainant, thus violating OPRA pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Hobbs v. Township of Hillside (Union), GRC Complaint No. 2009-286 (November 2010).
4. The Custodian provided the records responsive to request Item No. 1, contracts, agreements and letters of understanding after the statutorily mandated seven (7)



business days. However, the Complainant's request for "documents shall include compensation to Ms. Amana and related companies" is overly broad and unclear because it would require the Custodian to conduct research to locate and identify responsive records. The term "related companies" does not identify with reasonable clarity specific government records. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

5. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of all the monthly billing invoices from Ms. Amana for 2007 through 2010 responsive to the Complainant's OPRA requests dated April 27, 2010 and July 9, 2010 in order to determine the validity of the Custodian's assertion that the redacted portions of the records constitute attorney-client privilege information pursuant to N.J.S.A. 47:1A-1.1.
6. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see #5 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 records 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.**
7. The Council defers analysis of whether the Custodian properly provided the Complainant copies of the records responsive to request Item No. 2, rather than providing the Complainant with an on-site inspection of such records, pending the Council's Interim Order.
8. 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 31st Day of January, 2012

Robin Berg Tabakin, Chair
Government Records Council

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."

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**

**Richard Rivera¹
Complainant**

GRC Complaint No. 2010-182

v.

**City of Camden (Camden)²
Custodian of Records**

Records Relevant to Complaint:

April 27, 2010: On-site inspection of the following records:

1. Contracts, agreements, and letters of understanding regarding the hiring, retention and services of Ms. Caryl Amana, Esq. (“Ms. Amana”) from 2000 through the present. Documents shall include compensation to Ms. Amana and related companies.

2. Monthly billing invoices from Ms. Amana for 2008 and 2009 detailing the work and services provided either as an individual or through a related firm or company.

July 9, 2010: Copies of monthly billing invoices from Ms. Amana for 2007 and 2010 detailing the work and services she has provided either in an individual capacity or through a related firm or company.

Request Made: April 27, 2010 and July 9, 2010

Response Made: May 14, 2010 and July 22, 2010

Custodian: Luis Pastoriza

GRC Complaint Filed: August 2, 2011³

Background

April 27, 2010

Complainant’s first (1st) Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above in an e-mail attachment referencing OPRA.

May 14, 2010

Custodian’s response to the first (1st) OPRA request dated April 27, 2010. The Custodian responds in writing to the Complainant’s first (1st) OPRA request on the

¹ No legal representation listed on record.

² Represented by Jason Asuncion, Esq. (Camden, NJ).

³ The GRC received the Denial of Access Complaint on said date.

thirteenth (13th) business day following receipt of such request. The Custodian provides a copy of the record responsive to request Item No. 1. The Custodian also provides copies of records responsive to request Item No. 2 with redactions.⁴

July 9, 2010

Complainant's second (2nd) OPRA request. The Complainant requests copies of records relevant to this complaint listed above in an e-mail attachment referencing OPRA.

July 12, 2010

E-mail from Ms. Yenise Valdez ("Ms. Valdez"), Data Clerk, to Chief of Police John Thomson ("Chief Thomson") attaching the Complainant's second (2nd) OPRA request.⁵ Ms. Valdez informs Chief Thomson, Mr. McCoach, Custodian's Counsel, Ms. Sicard and Ms. Tucker to forward any records responsive to the Complainant's July 9, 2010 OPRA request to the Municipal Clerk's Office for pricing and final distribution. Ms. Valdez also states that if the items are unavailable, please notify the municipal clerk's office.

July 13, 2010

E-mail from Ms. Sicard to Ms. Valdez. Ms. Sicard states that she thought that the Complainant's OPRA request dated April 27, 2010 was already fulfilled. Ms. Sicard also states that if the OPRA request dated April 27, 2010 was not fulfilled to please let her know so she can start working on it.

July 13, 2010

E-mail from Ms. Valdez to Ms. Sicard. Ms. Valdez informs Ms. Sicard that Sergeant Joe Wysocki ("Sergeant Wysocki") e-mailed Ms. Valdez stating that she should receive information responsive for the Complainant's OPRA request dated July 9, 2010.

July 22, 2010

E-mail from Ms. Valdez to Custodian's Counsel. Ms. Valdez inquires if Counsel has any records responsive to the Complainant's OPRA request dated July 9, 2010 request Item No. 3 because the response is due today.⁶

July 22, 2010

Ms. Valdez's response to the Complainant's OPRA request dated July 9, 2010. Ms. Valdez responds in writing to the Complainant's second (2nd) OPRA request on the eighth (8th) business day following receipt of such request. Ms. Valdez states that she is still waiting for a response from the Police Department to determine if they have any records responsive to the OPRA request. Ms. Valdez also states that once she receives the information she will contact the Complainant.

⁴ The Custodian does not provide a legal basis for such redactions.

⁵ Ms. Valdez also copies Mr. Howard McCoach ("Mr. McCoach"), City Attorney, Custodian's Counsel, Ms. Teresa Sicard ("Ms. Sicard"), Camden City Police Department Public Information Officer, and Ms. Christine Tucker ("Ms. Tucker"), Business Administrator on the e-mail.

⁶ The evidence of record indicates that the Custodian received the OPRA request on July 12, 2010. The evidence of record also indicates that the Custodian's response was due on July 21, 2010.

July 22, 2010

E-mail from the Complainant to Ms. Valdez. The Complainant states that the response to his second (2nd) OPRA request dated July 9, 2010 is past due. The Complainant also states that he will file a Denial of Access Complaint. The Complainant requests that Ms. Valdez advise as to the status of his OPRA request dated July 9, 2010 as soon as possible.

July 27, 2010

E-mail from Ms. Valdez to Chief Thomson, Ms. Sicard, Mr. McCoach and Custodian's Counsel. Ms. Valdez states that the time period to respond to the Complainant's OPRA request dated July 9, 2010 has expired. Ms. Valdez states that if she does not receive any information from Chief Thomson, Ms. Sicard or Mr. McCoach within the next two (2) days, a non-response letter will be sent to the Complainant.

July 28, 2010

E-mail from the Complainant to Ms. Valdez. The Complainant states that he is filing a Denial of Access Complaint with the GRC. The Complainant thanks Ms. Valdez for her assistance, but states that his OPRA requests are time sensitive.

July 28, 2010

E-mail from Custodian's Counsel to Ms. Valdez. Counsel instructs Ms. Valdez to inform the Complainant that Counsel will continue to obtain the records responsive to the OPRA request dated July 9, 2010. Counsel also states that they are retrieving the records responsive directly from Ms. Amana.

July 29, 2010

E-mail from Ms. Valdez to the Complainant. Ms. Valdez informs the Complainant that the City is still trying to obtain records responsive to the OPRA request dated July 9, 2010

July 29, 2010

E-mail from the Complainant to Ms. Valdez. The Complainant thanks Ms. Valdez for the update.

August 2, 2011

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

- Complainant's first (1st) OPRA request dated April 27, 2010
- Letter from the Custodian to the Complainant dated May 14, 2010
- Complainant's second (2nd) OPRA request dated July 9, 2010⁷

Complainant's first (1st) OPRA request Item No. 2:

The Complainant states that he filed his first (1st) OPRA request on April 27, 2010 and the Custodian responded after the statutory mandated seven (7) business day

⁷ The Complainant also includes copies of records responsive to request Item No. 1 and No. 2. Richard Rivera v. City of Camden (Camden), 2010-182 – Findings and Recommendations of the Executive Director

time period had elapsed. The Complainant also states that copies of the records responsive to his first (1st) OPRA request were picked up in person by courier. The Complainant further states that the Custodian provided redacted copies of invoices responsive to request Item No. 2. The Complainant states that Ms. Amana provided contractual legal services to the City of Camden Police Department for the prosecution of administrative charges against police officers. The Complainant states that the Custodian redacted the dates of the public hearings, police officer names, Internal Affairs investigation names, Internal Affairs case numbers, Office of Administrative Law (“OAL”) Docket numbers, and Civil Service Board Docket numbers from the invoices responsive to request Item No. 2 without explanation.

The Complainant argues that the Custodian’s redactions to the records responsive to request Item No. 2 are unwarranted. The Complainant argues that the public hearings for OAL and Merit Board hearings are open to the public and the dates and docket numbers are searchable on the internet, therefore this information should not be redacted. The Complainant also argues that once a police officer appeals an administrative hearing to OAL or the Merit Board, the investigation contents are no longer confidential unless the judge rules otherwise; therefore the police officer’s name should not be redacted. The Complainant also argues that the Attorney General Internal Affairs Policy and Procedures (revised 2000) allows police officers to open their departmental administrative hearing to the public, thus redactions on invoices relating to administrative hearings that were related to the hearings are unnecessary. The Complainant further argues that Internal Affairs Investigators’ names should not be redacted because such names are public records searchable on the internet and these investigators are called as witnesses at OAL and Merit Board hearings, therefore their names are public knowledge. The Complainant also argues that the attorney-client privilege cannot be invoked when it is in the public’s best interest to know what Ms. Amana is charging for her legal services. Lastly, the Complainant states that the GRC should rule in favor of the Complainant and order the Custodian to disclose the unredacted records.⁸

Complainant’s second (2nd) OPRA request:

The Complainant states that at the time of the filing of his Denial of Access Complaint, he has not received any records responsive to this OPRA request.

The Complainant does not agree to mediate this complaint.

August 3, 2010

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

August 10, 2010

Custodian’s SOI with the following attachments:⁹

- Complainant’s second (2nd) OPRA request dated July 9, 2010

⁸ The Complainant does not dispute that he was unlawfully denied access to the records responsive for request Item No. 1.

⁹ The Custodian does not include a copy of the Complainant’s first (1st) OPRA request. The Custodian also does not include a copy of his response dated May 14, 2010 to the Complainant’s first (1st) OPRA request. Richard Rivera v. City of Camden (Camden), 2010-182 – Findings and Recommendations of the Executive Director

- E-mail from Ms. Valdez to Chief Thomson dated July 12, 2010 (with attachments)
- E-mail from Ms. Sicard to Ms. Valdez dated July 13, 2010
- E-mail from Ms. Valdez to Ms. Sicard dated July 13, 2010
- E-mail from Ms. Valdez to Custodian's Counsel dated July 22, 2010
- E-mail from the Complainant to Ms. Valdez dated July 22, 2010
- E-mail from Ms. Valdez to Chief Thomson, Ms. Sicard, Mr. McCoach and Custodian's Counsel dated July 27, 2010
- E-mail from the Complainant to Ms. Valdez dated July 28, 2010
- E-mail from Ms. Valdez to the Complainant dated July 29, 2010
- E-mail from the Complainant to Ms. Valdez dated July 29, 2010

The Custodian certifies that the Complainant's second (2nd) OPRA request was submitted to the Municipal Clerk's Office on July 9, 2010. The Custodian also certifies that this request was then forwarded to the Police Department and Finance Department to determine if either department had any records responsive. The Custodian further certifies that once the responses were gathered from the police and finance departments, the information was forwarded to the Complainant.

The Custodian certifies that the earliest date of destruction for the billing invoices responsive to the Complainant's first (1st) OPRA request Item No. 2 and second (2nd) OPRA request is August 2014 and August 2016 respectively, because the specific retention schedule for this records series is six (6) years, pending approval by the Municipal Auditor, in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management.

Complainant's first (1st) OPRA request Item No. 2:

Custodian's Counsel argues that the Complainant disputes the redactions made to the responsive monthly billing invoices for the years 2008 and 2009. Counsel argues that the information redacted contains attorney-client privileged material pursuant to N.J.S.A. 47:1A-1.1., N.J.S.A. 2A:84A-20(1) and N.J.R.E. 504. Counsel states that the attorney-client privilege applies whenever confidential legal advice is rendered to the City, whether by private counsel or the City Attorney. Counsel also states that if any information contained in the invoices is considered attorney-client privileged, such information is confidential and beyond OPRA's reach.

Counsel also argues that the Complainant has provided no authority to support his claim that the public accessibility of an attorney's work product automatically causes a waiver of the attorney-client privilege. Counsel further argues that the City carefully maintained the confidentiality of the legal matters in which Ms. Amana provided legal advice. In addition, Counsel argues that the City correctly asserted the attorney-client privilege. Counsel states that the City allowed Ms. Amana to properly redact her 2008 and 2009 billing invoices at the time of the Complainant's OPRA request. Counsel argues that the invoices were redacted for identifying material relevant to specific case matters and pertinent individuals to whom Ms. Amana provided legal advice. Counsel

states that the actual work performed by Ms. Amana and her related billing charges were not redacted.

Complainant's second (2nd) OPRA request:

Counsel states that the City will immediately provide the records responsive to this OPRA request after the Council determines the appropriateness of the City's redactions. Counsel argues that the City reserves the right to redact the records responsive based on the attorney-client privilege.

August 10, 2010

E-mail from Custodian's Counsel to the GRC. Counsel states that Ms. Valdez included partially redacted records responsive to the Complainant's second (2nd) OPRA request. Counsel also states that these records have not been disclosed to the Complainant. Counsel further states that these records will be disclosed to the Complainant after the GRC makes a determination on the appropriateness of such redactions.

August 11, 2010

E-mail from Custodian's Counsel to the GRC. Counsel states that he has been advised that the Complainant was provided the partially redacted records responsive to the OPRA request dated July 9, 2010.¹⁰

Analysis

Whether the Custodian and Ms. Valdez timely responded to the Complainant's April 27, 2010 and July 9, 2010 OPRA requests?

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.

Also, OPRA provides that:

"Immediate 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.

¹⁰ Counsel states that the City maintains its right to redact privileged and confidential information in records responsive to the Complainant's second (2nd) OPRA request. However, the evidence of record indicates that the Complainant was only requesting billing records responsive for 2007 and 2010. The evidence of record also indicates that the Complainant requested monthly billing records for 2008 and 2009 in request Item No. 2 of his first (1st) OPRA request.

OPRA further 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 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.¹¹ 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 (Interim Order October 31, 2007).

Further, the invoices requested in the instant complaint are specifically classified as “immediate access” records pursuant to N.J.S.A. 47:1A-5.e. In Herron v. Township of Montclair, GRC Complaint No. 2006-178 (February 2007), the Council held that the “immediate access language of OPRA (N.J.S.A. 47:1A-5.e.) suggests that the Custodian was still obligated to immediately notify the Complainant...” Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian should immediately respond to the request for those records, granting or denying access, requesting additional time to respond or requesting clarification of the request.

In this complaint, the Custodian and Ms. Valdez responded to the Complainant’s April 27, 2010 and July 9, 2010 OPRA requests respectively after statutorily mandated seven (7) business days. Further, the Custodian and Ms. Valdez failed to respond to both of the Complainant’s OPRA requests immediately, as is required for the invoices requested pursuant to N.J.S.A. 47:1A-5.e.

Therefore, the Custodian’s and Ms. Valdez’s failure to respond in writing to the Complainant’s April 27, 2010 and July 9, 2010 OPRA requests, respectively, 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.,

¹¹ 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.

and Kelley, *supra*. Further, because the Custodian and Ms. Valdez failed to immediately grant access to the invoices responsive to both of the Complainant's OPRA requests, the Custodian and Ms. Valdez have violated N.J.S.A. 47:1A-5.e. See Herron, *supra*.

Whether the Custodian's response to the Complainant's April 27, 2010 OPRA request Item No. 2 and Ms. Valdez's response to the Complainant's July 9, 2010 OPRA request was sufficient?

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.

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."

Complainant's April 27, 2010 OPRA request Item No. 2

In the instant complaint, the Custodian responded on the thirteenth (13th) business day following receipt of such request providing copies of the records responsive to request Item No. 2 with redactions. However, the evidence of record indicates that the Custodian did not provide a specific lawful basis for each redaction.

Therefore, the Custodian's response to the Complainant's OPRA request dated April 27, 2010 was insufficient because the Custodian failed to set forth a specific lawful basis for redactions made to the monthly billing invoices for from Ms. Amana for 2008 and 2009, pursuant to N.J.S.A. 47:1A-5g and Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (December 2008).

Complainant's July 9, 2010 OPRA request

The evidence of record indicates that Ms. Valdez responded to the Complainant's OPRA request dated July 9, 2010 on the ninth (9th) business day following receipt of such request stating that she is still waiting for a response from the Police Department to determine they have any records responsive to the OPRA request. Ms. Valdez also stated that she would contact the Complainant once she received the information.

In Hobbs v. Township of Hillside (Union), GRC Complaint No. 2009-286 (November 2010), the custodian informed the complainant on the eighth (8th) business day following receipt of such request, that the complainant's request was forwarded to the Mayor for completion. However, the custodian failed to provide an anticipated date certain upon the complainant could expect disclosure of the requested records. The Council held that the custodian's response was insufficient pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. because said response failed to provide the complainant with a specific date upon which records would be provided.

The facts in the instant complaint are similar to those in Hobbs, *supra*. In the instant complaint, Ms. Valdez responded on the ninth (9th) business day after receipt of the Complainant's July 9, 2010 OPRA request stating that she was still waiting for a response from the Police Department to determine if they have any records responsive. Ms. Valdez's response to the OPRA request failed to specify a date certain upon which the Complainant could expect disclosure of the requested records.

Therefore, Ms. Valdez's response to the Complainant's OPRA request dated July 9, 2010 was insufficient because she failed to provide an anticipated date upon which the records responsive to the Complainant's July 9, 2010 OPRA request would be provided to the Complainant, thus violating OPRA pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Hobbs, *supra*.

Whether the Complainant's request for, "documents shall include compensation to Ms. Amana and related companies" filed April 27, 2010 is invalid under OPRA?

The Complainant's April 27, 2010 request Item No. 1, which partly sought "[d]ocuments shall include compensation to Ms. Amana and related companies" is overly broad because it fails to identify specific government records and is therefore invalid under OPRA.

The New Jersey Superior Court has held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.'* N.J.S.A. 47:1A-1." (Emphasis added.) MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). The Court further held that "[u]nder OPRA, *agencies are required to disclose only*

'*identifiable*' government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files." (Emphasis added.) *Id.* at 549.

In determining that MAG Entertainment's request for "all documents or records" from the Division of Alcoholic Beverage Control pertaining to selective enforcement was invalid under OPRA, the Appellate Division noted that:

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

Further, in Bent v. Stafford Police Department, 381 N.J.Super. 30, 37 (App. Div. 2005),¹² the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."¹³

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J.Super. 166, 180 (App. Div. 2007) the court cited MAG by stating that "...when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA..." The court also quoted N.J.S.A. 47:1A-5.g in that "[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency." The court further stated that "...the Legislature would not expect or want courts to require more persuasive proof of the substantiality of a disruption to agency operations than the agency's need to...generate new records..."

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

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

¹³ As stated in Bent, *supra*.

The Custodian provided the records responsive to request Item No. 1, contracts, agreements and letters of understanding after the statutorily mandated seven (7) business days. However, the Complainant's request for "documents shall include compensation to Ms. Amana and related companies" is overly broad and unclear because it would require the Custodian to conduct research to locate and identify responsive records. The term "related companies" does not identify with reasonable clarity specific government records. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Whether the Custodian unlawfully redacted the records responsive to the Complainant's April 27, 2010 OPRA request Item No. 2 and July 9, 2010 OPRA request?

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 ... A government record shall not include the following ... 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 ..." (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.

The Complainant argued that the redactions to the records responsive to the April 27, 2010 OPRA request for Item No. 2 are unwarranted. Conversely, the Custodian asserted in the SOI that the monthly billing invoices from 2008 and 2009 responsive to request Item No. 2, were redacted to protect attorney-client privilege material pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 2A:84A-20(1) and N.J.R.E. 504. The Custodian also asserted that the attorney-client privilege applies whenever confidential legal advice is rendered to the City, whether by private counsel or City Attorney. The Custodian further asserted that the City allowed Ms. Amana to redact the responsive records at the time of the Complainant's OPRA request. Lastly, the Custodian asserted that the records responsive to Complainant's OPRA request dated July 9, 2010 were provided to the Complainant with redactions on August 11, 2010.

The Custodian also asserted that the invoices were redacted to protect identifying material relevant to specific case matters and pertinent individuals to whom Ms. Amana provided legal advice. The Custodian asserted that the actual work performed by Ms. Amana and her related billing charges were not redacted.

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 GRC¹⁴ in which the GRC dismissed the complaint by accepting the Custodian's legal conclusion for the denial of access without further review. The court stated that:

“OPRA contemplates the GRC’s meaningful review of the basis for an agency’s decision to withhold government records...When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers.”

The court also stated that:

“[t]he statute also contemplates the GRC’s *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the ‘Open Public Meetings Act,’ N.J.S.A. 10:4-6 to -21, it also provides that the GRC ‘may go into 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

¹⁴ Paff v. NJ Department of Labor, Board of Review, GRC Complaint No. 2003-128 (October 2005).
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avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7f, which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.”

Therefore, pursuant to Paff, *supra*, the GRC must conduct an *in camera* review of all the monthly billing invoices from Ms. Amana for 2007 through 2010 responsive to the Complainant’s OPRA requests dated April 27, 2010 and July 9, 2010 in order to determine the validity of the Custodian’s assertion that the redacted portions of the records constitute attorney-client privilege information pursuant to N.J.S.A. 47:1A-1.1.

The Council defers analysis of whether the Custodian properly provided the Complainant copies of the records responsive to request Item No. 2, rather than providing the Complainant with an on-site inspection of such records, pending the Council’s Interim Order.

Whether the Custodian’s and Ms. Valdez’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.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s and Ms. Valdez’s failure to respond in writing to the Complainant’s April 27, 2010 and July 9, 2010 OPRA requests, respectively, 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 (Morris), GRC Complaint No. 2007-11 (Interim Order October 31, 2007). Further, because the Custodian and Ms. Valdez failed to immediately grant access to the invoices responsive to both of the Complainant’s OPRA requests, the Custodian and Ms. Valdez have violated N.J.S.A. 47:1A-5.e. *See Herron v. Township of Montclair(Essex)*, GRC Complaint No. 2006-178 (February 2007).
2. The Custodian’s response to the Complainant’s OPRA request dated April 27, 2010 was insufficient because the Custodian failed to set forth a specific lawful basis for redactions made to the monthly billing invoices for from Ms. Amana for 2008 and 2009, pursuant to N.J.S.A. 47:1A-5g. and Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (December 2008).
3. Ms. Valdez’s response to the Complainant’s OPRA request dated July 9, 2010 was insufficient because she failed to provide an anticipated date upon which

the records responsive to the Complainant's OPRA request dated July 9, 2010 would be provided to the Complainant, thus violating OPRA pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i. and Hobbs v. Township of Hillside (Union), GRC Complaint No. 2009-286 (November 2010).

4. The Custodian provided the records responsive to request Item No. 1, contracts, agreements and letters of understanding after the statutorily mandated seven (7) business days. However, the Complainant's request for "documents shall include compensation to Ms. Amana and related companies" is overly broad and unclear because it would require the Custodian to conduct research to locate and identify responsive records. The term "related companies" does not identify with reasonable clarity specific government records. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
5. Pursuant to Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of all the monthly billing invoices from Ms. Amana for 2007 through 2010 responsive to the Complainant's OPRA requests dated April 27, 2010 and July 9, 2010 in order to determine the validity of the Custodian's assertion that the redacted portions of the records constitute attorney-client privilege information pursuant to N.J.S.A. 47:1A-1.1.
6. **The Custodian must deliver¹⁵ to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see #5 above), a document or redaction index¹⁶, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4¹⁷, that the records 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.**
7. The Council defers analysis of whether the Custodian properly provided the Complainant copies of the records responsive to request Item No. 2, rather than providing the Complainant with an on-site inspection of such records, pending the Council's Interim Order.
8. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the

¹⁵ 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.

¹⁶ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

¹⁷ "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."

circumstances 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