



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

April 29, 2014 Government Records Council Meeting

Robert A. Verry
Complainant

Complaint No.: 2011-173

v.

Borough of South Bound Brook (Somerset)
Custodian of Record

At the April 29, 2014 public meeting, the Government Records Council (“Council”) considered the April 22, 2014 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that this complaint be dismissed. The Complainant (via Counsel) withdrew his complaint in a letter to the Honorable Robert W. Bingham, Administrative Law Judge, dated April 9, 2014, because this matter was settled. Therefore, no further adjudication is required.

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

Final Decision Rendered by the
Government Records Council
On The 29th Day of April, 2014

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: May 2, 2014



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
April 29, 2014 Council Meeting**

**Robert A. Verry¹
Complainant**

GRC Complaint No. 2011-173

v.

**Borough of South Bound Brook (Somerset)²
Custodian of Records**

Records Relevant to Complaint: Copy of the resignation letter from previous Borough of South Bound Brook (“Borough”) Counsel Mr. William T. Cooper, III, Esq. (“Mr. Cooper”).

Custodian of Record: Donald E. Kazar

Request Received by Custodian: May 3, 2011

Response Made by Custodian: May 7, 2011

GRC Complaint Received: May 18, 2011

Background

September 25, 2012 Council Meeting:

At its September 25, 2012 public meeting, the Council considered the September 18, 2012 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

1. The Custodian timely complied with the Council’s August 28, 2012 Interim Order by certifying that he provided the responsive record to the Complainant via e-mail within the prescribed time frame.
2. Although the Custodian unlawfully denied access to the responsive resignation letter pursuant to N.J.S.A. 47:1A-6, the Custodian timely complied with the Council’s August 28, 2012 Interim Order. 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 unreasonable denial of access under the totality of the circumstances.

¹ Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

² Represented by Francesco Taddeo, Esq. (Somerville, NJ).

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Id. at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian provided the Complainant with the responsive resignation letter in accordance with the Council’s August 28, 2012 Interim Order. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee pursuant to N.J.S.A. 47:1A-6, Teeters, and Mason. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney’s fees. Based on the New Jersey Supreme Court’s decision in New Jerseyans for a Death Penalty Moratorium v. NJ Dep’t of Corrections, 185 N.J. 137, 156-158 (2005) and the Council’s decisions in Wolosky v. Twp. of Sparta (Sussex), GRC Complaint Nos. 2008-219 and 2008-277 (November 2011), an enhancement of the lodestar fee is not appropriate in this matter because the facts of this complaint do not rise to a level of “unusual circumstances ... justify[ing] an upward adjustment of the lodestar[;]” this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

Procedural History:

On September 26, 2012, the Council distributed its Interim Order to all parties. On April 30, 2013, the complaint was transmitted to the Office of Administrative Law.

On April 9, 2014, the Complainant’s Counsel sent a letter to the Honorable Robert W. Bingham, Administrative Law Judge, withdrawing this complaint because same was settled.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint be dismissed. The Complainant (via Counsel) withdrew his complaint in a letter to the Honorable Robert W. Bingham, Administrative Law Judge, dated April 9, 2014, because this matter was settled. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Dawn R. SanFilippo, Esq.
Senior Counsel

April 22, 2014



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

August 28, 2012 Government Records Council Meeting

Robert A. Verry
Complainant

Complaint No. 2011-173

v.

Borough of South Bound Brook (Somerset)
Custodian of Record

At the August 28, 2012 public meeting, the Government Records Council ("Council") considered the August 21, 2012 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian did not timely respond to the Complainant's OPRA request. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Custodian unlawfully denied access to the responsive resignation letter. N.J.S.A. 47:1A-6. The Custodian shall disclose same to the Complainant via his preferred method of delivery, which is electronically or via facsimile if the record is not available electronically.
3. **The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**

¹ "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."

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

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 28th Day of August, 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: August 29, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 28, 2012 Council Meeting**

**Robert A. Verry¹
Complainant**

GRC Complaint No. 2011-173

v.

**Borough of South Bound Brook (Somerset)²
Custodian of Records**

Records Relevant to Complaint: Copy of the resignation letter from previous Borough of South Bound Brook (“Borough”) Counsel Mr. William T. Cooper, III, Esq. (“Mr. Cooper”).

Request Made: May 3, 2011

Response Made: May 7, 2011

Custodian: Donald E. Kazar

GRC Complaint Filed: May 18, 2011³

Background

May 3, 2011

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above in a letter referencing OPRA. The Complainant indicates that the preferred method of delivery is e-mail or facsimile only if the record is not available electronically.

May 7, 2011

Custodian’s response to the OPRA request. The Custodian responds⁴ to the Complainant’s OPRA request on the third (3rd) business day following receipt of such request.⁵ The Custodian provides the Complainant access to the responsive record via facsimile.

May 17, 2011

E-mail from the Custodian to the Complainant. The Custodian states that he faxed the responsive letter to the Complainant already.

¹ Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

² Represented by Francesco Taddeo, Esq. (Somerville, NJ).

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

⁴ Although the Custodian certified in both the Statement of Information and subsequently in a legal certification dated July 10, 2012 that he responded providing the Complainant access to the responsive letter, the Custodian provided no competent, credible evidence to support his certification.

⁵ The Custodian certifies in the Statement of Information that he received the Complainant’s OPRA request on May 4, 2011.

May 17, 2011

E-mail from the Custodian to the GRC and Complainant.⁶ The Custodian states that he faxed the responsive letter to the Complainant within the statutorily mandated time frame. The Custodian asserts that once he faxes the record, he has no idea whether the Complainant actually receives same.

The Custodian states that given the Complainant's history of filing complaints before the GRC, there is no reason why he would not respond thus causing additional expenses to the taxpayers. The Custodian states that he has fulfilled multiple OPRA requests for other requestors without incident. The Custodian further states that he fulfills duplicate requests for the Complainant and as many as three (3) to four (4) OPRA requests a week.

May 18, 2011

Denial of Access Complaint filed with the Government Records Council ("GRC") attaching the Complainant's OPRA request dated May 3, 2011.

The Complainant states that he submitted an OPRA request to the Custodian on May 3, 2011. The Complainant states that according to the GRC's "Handbook for Records Custodians" (Fifth Edition, 2011):

"Custodians should fulfill a request as soon as possible but not later than seven business days after the request is received, provided that the record is currently available and not in storage or archived. N.J.S.A. 47:1A-5.i. Day One (1) is the day following the custodian's receipt of the request ... If the custodian fails to respond to the requestor within seven business days after receiving a request, the failure to respond will be deemed a denial of the request. N.J.S.A. 47:1A-5.i." *Id.* at pg. 16.

The Complainant states that as of May 17, 2011, the Custodian provided no records to the Complainant.

The Complainant asserts that the Custodian knowingly and willfully refused to provide access to records in response to a valid OPRA request. The Complainant asserts that unless the GRC holds custodians accountable for blatantly disregarding their duties under OPRA, there is no motivation for them to comply with the law. The Complainant further asserts that he believes, that he is entitled to a reasonable award of attorney's fees, the GRC should order the Custodian to disclose the responsive record and the Custodian should be sanctioned accordingly.

The Complainant does not agree to mediate this complaint.

May 19, 2011

E-mail from the Custodian to the Complainant and the GRC. The Custodian states that according to his files, he faxed the responsive letter to the Complainant on May 7, 2011.

⁶ The Custodian received the Complainant's Denial of Access Complaint on May 17, 2011.
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July 11, 2011

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

July 15, 2011

E-mail from the Custodian to the GRC. The Custodian requests an extension of time until July 25, 2011 to submit the SOI.

July 18, 2011

E-mail from the GRC to the Custodian. The GRC grants the Custodian an extension of time until July 25, 2011 to submit the SOI.

July 19, 2011

E-mail from the Custodian to the GRC. The Custodian requests a second (2nd) extension of time until July 27, 2011 to submit the SOI.

July 20, 2011

E-mail from the GRC to the Custodian. The GRC grants the Custodian an extension of time until July 27, 2011 to submit the SOI. The GRC further advises that because this is the Custodian’s second (2nd) extension of time, the GRC will not grant any further extensions.

July 27, 2011

Custodian’s SOI with the following attachments:

- E-mail from the Complainant to the Custodian dated May 3, 2011 attaching the Complainant’s OPRA request.
- E-mail from the Complainant to the GRC dated May 17, 2011 attaching the Denial of Access Complaint
- E-mail from the Custodian to the Complainant dated May 17, 2011.
- E-mail from the Custodian to the GRC and Complainant dated May 17, 2011.
- E-mail from the Custodian to the Complainant and GRC dated May 19, 2011.

The Custodian certifies that the last date upon which records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services is not applicable.⁷

The Custodian certifies that he received the Complainant’s OPRA request on May 3, 2011. The Custodian certifies that he provided the Complainant with the responsive record via facsimile on May 7, 2011.

June 29, 2012

Letter from the GRC to the Custodian. The GRC states that “[t]he Council, acting through its Executive Director, may require custodians to submit, within prescribed time limits, additional information deemed necessary for the Council to adjudicate the

⁷ The Custodian did not certify to the search undertaken to locate the records responsive as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).
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complaint.” *N.J.A.C. 5:105-2.4(1)*. The GRC states that it has reviewed the parties’ submissions and has determined that additional information is required.

The GRC states that in the SOI, the Custodian certifies that he provided to the Complainant the responsive record via facsimile on May 7, 2011; however, the Custodian provided no evidence supporting this certification. Additionally, the GRC states that the Custodian did not identify whether the record was available electronically per the Complainant’s preferred method of delivery.

The GRC thus requests a legal certification, pursuant to N.J. Court Rule 1:4-4, in response to the following questions:

1. Whether any evidence exists that the Custodian sent the responsive record to the Complainant? Please provide any supporting documentation that exists.
2. Whether the Custodian had the ability to send the responsive record via the Complainant’s preferred method of delivery, which was e-mail?

The GRC requests that the Custodian submit the legal certification and any supporting documentation by close of business on July 5, 2012. The GRC further advises that submissions received after this deadline date may not be considered by the Council for adjudication.

July 5, 2012

E-mail from the Custodian to the GRC. The Custodian states that he has been out of the office most of the week and thus requests an extension of time until July 10, 2012 to submit the legal certification.

July 9, 2012

E-mail from the GRC to the Custodian. The GRC grants the Custodian an extension of time until July 10, 2012 to submit the legal certification.

July 10, 2012

Custodian’s legal certification with the following attachments:

- Complainant’s OPRA request dated May 3, 2011 with the Custodian’s notes thereon.
- E-mail from the Custodian to the Complainant dated May 17, 2011.
- E-mail from the Custodian to the Complainant and GRC dated May 17, 2011.
- E-mail from the Custodian to the Complainant and GRC dated May 19, 2011.

The Custodian certifies that the Complainant submitted to the Borough on May 3, 2011 an OPRA request seeking Mr. Cooper’s resignation letter. The Custodian certifies that he received said request on May 4, 2011. The Custodian certifies that he faxed the record to the Complainant on May 7, 2011 as evidenced by the notes at the bottom of the Complainant’s letter request.

The Custodian certifies that the Complainant's preferred method of delivery was electronically or via facsimile if the record was not available electronically. The Custodian certifies that did not have the ability to scan the record at that time and thus faxed same. The Custodian certifies that after receiving this complaint on May 17, 2011, he e-mailed the Complainant noting that he faxed the record to the Complainant and felt as though he was being harassed by the Complainant. The Custodian certifies that he e-mailed all parties on May 17, 2011 reiterating that his records indicated that he provided the record to the Complainant on May 7, 2011.

The Custodian certifies that he did not print the fax confirmation page for this fax; however, his note at the bottom of the OPRA request form is proof that he sent the record to the Complainant on May 7, 2011.

Analysis

Whether the Custodian timely responded to the Complainant's OPRA request?

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.

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.⁸ 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

⁸ 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.

“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).

The Complainant filed this complaint arguing that the Custodian never responded to his OPRA request. Upon receipt of said complaint, the Custodian e-mailed the Complainant stating that he sent the responsive record to the Complainant via facsimile on May 7, 2011. The Custodian subsequently certified to this fact in the SOI.

Further, the Custodian again certified to same in a legal certification dated July 10, 2012. The Custodian attached as part of the certification a copy of the Complainant’s OPRA request with a note stating “Complete – May 7, 2011” and e-mails he sent to the Complainant and GRC on May 17, 2011 and May 19, 2011. However, these submissions do not rise to the level of competent, credible evidence establishing by a preponderance of the evidence that the Custodian faxed the requested record to the Complainant on May 7, 2011, as would a cover sheet or letter, transmission confirmation page or even a facsimile journal. Thus, the Custodian failed to provide competent, credible evidence in either the SOI or certification to support his response.

Whenever a denial of access complaint is filed, a custodian is required to bear his burden of proving a lawful denial of access to any records. N.J.S.A. 47:1A-6. As previously stated, a custodian’s failure to respond in writing results in a “deemed” denial. N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i. Here, the Custodian has failed to provide adequate evidence of his timely response and has thus failed to bear the burden of proving he responded in a timely manner.

Therefore, the Custodian did not timely respond to the Complainant’s OPRA request. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley, *supra*.

Whether the Custodian unlawfully denied access to the requested resignation letter?

OPRA provides that:

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

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or*

kept on file ... or that has been received in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

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

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

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

The record at issue herein is a resignation letter that the Complainant contends he never received from the Custodian. As previously stated, the evidence of record is insufficient to indicate whether the Custodian ever provided the responsive letter to the Complainant. Specifically, the Custodian offered no supporting documentation that he provided said record via facsimile to the Complainant on May 7, 2011 nor did the Custodian provide the letter to all parties through a submission as part of the complaint process.

It is clear from the evidence of record that the responsive letter is a government record pursuant to OPRA. N.J.S.A. 47:1A-1.1. Additionally, there is no evidence in the record to indicate that any exemption applies to said letter. Accordingly, the Custodian was required to disclose same in response to the Complainant’s OPRA request; however, he failed to adequately bear his burden of proving that he sent the responsive record to the Complainant via facsimile on May 7, 2011. Thus, the Custodian unlawfully denied access to same.

Therefore, the Custodian unlawfully denied access to the responsive resignation letter. N.J.S.A. 47:1A-6. The Custodian shall disclose same to the Complainant via his preferred method of delivery, which is electronically or via facsimile if the record is not available electronically.

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 did not timely respond to the Complainant’s OPRA request. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Custodian unlawfully denied access to the responsive resignation letter. N.J.S.A. 47:1A-6. The Custodian shall disclose same to the Complainant via his preferred method of delivery, which is electronically or via facsimile if the record is not available electronically.
3. **The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁹ to the Executive Director.¹⁰**
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: Frank F. Caruso
Senior Case Manager

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

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

Approved By: Karyn Gordon, Esq.
Acting Executive Director

August 21, 2012