



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**June 30, 2015 Government Records Council Meeting**

Robert A. Verry  
Complainant

Complaint No. 2011-280

v.

Borough of South Bound Brook (Somerset)  
Custodian of Record

At the June 30, 2015 public meeting, the Government Records Council (“Council”) considered the June 23, 2015 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 the Complainant has failed to provide any legal basis for the GRC to reject the Administrative Law Judge’s findings and that the Council accept the ALJ’s Initial Decision, dated June 2, 2015, to dismiss the complaint because “[t]he mere use of a private cell phone at work to make private calls does not trigger . . .” OPRA and that the Burnett criteria militate against disclosure of work-related calls that the Custodian made from his private cell phone. Accordingly, “[the Complainant’s] motion is **DENIED**; [the Custodian’s] motion is **GRANTED**. This matter is **DISMISSED**.”

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 30<sup>th</sup> Day of June, 2015

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: July 2, 2015**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
June 30, 2015 Council Meeting**

**Robert A. Verry<sup>1</sup>  
Complainant**

**GRC Complaint No. 2011-280**

v.

**Borough of South Bound Brook (Somerset)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Regarding a cell phone<sup>3</sup> used by the Custodian for official Borough of South Bound Brook (“Borough”) business:

July 28, 2011 OPRA request<sup>4</sup>

1. The destination location of telephone calls made by the Custodian from June 19, 2010, to June 30, 2011.
2. The destination location of telephone calls received by the Custodian from June 19, 2010, to June 30, 2011.
3. The destination location of telephone calls made by the Custodian from February 19, 2008, to March 10, 2008.
4. The destination location of telephone calls received by the Custodian from February 19, 2008, to March 10, 2008.

August 9, 2011 OPRA request

1. The destination location of telephone calls made by the Custodian for the following dates: June 14, 2011, June 15, 2011, and June 16, 2011.
2. The destination location of telephone calls received by the Custodian for the following dates: June 14, 2011, June 15, 2011, and June 16, 2011.

August 14, 2011 OPRA request<sup>5</sup>

1. The destination location of telephone calls made by the Custodian for the following dates in 2011: February 1, 2, 4, 7, 8, 9, 10, 11, 14, 15, 16, 18, 21, 22, 23, 24, and 28.

---

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

<sup>2</sup> Represented by Robert G. Wilson, Esq., Kovacs and Wilson (Somerville, NJ).

<sup>3</sup> The Complainant identifies the specific telephone numbers in each OPRA request.

<sup>4</sup> The Complainant submitted two (2) OPRA requests; however, the GRC has consolidated them into one (1) request in the interest of clarity.

<sup>5</sup> The Complainant submitted four (4) OPRA requests; however, the GRC has consolidated them into one (1) request in the interest of clarity.

2. The destination location of telephone calls received by the Custodian for the following dates in 2011: February 1, 2, 4, 7, 8, 9, 10, 11, 14, 15, 16, 18, 21, 22, 23, 24, and 28.
3. The destination location of telephone calls made by the Custodian for the following dates in 2011: March 1, 2, 3, 4, 7, 8, 9, 10, 16, 18, 21, 22, 23, 24, 25, 28, 29, 30, and 31.
4. The destination location of telephone calls received by the Custodian for the following dates in 2011: March 1, 2, 3, 4, 7, 8, 9, 10, 16, 18, 21, 22, 23, 24, 25, 28, 29, 30, and 31.
5. The destination location of telephone calls made by the Custodian for the following dates in 2011: April 1, 4, 5, 6, 8, 11, 12, 15, 18, 20, 25, 26, 27, and 28.
6. The destination location of telephone calls received by the Custodian for the following dates in 2011: April 1, 4, 5, 6, 8, 11, 12, 15, 18, 20, 25, 26, 27, and 28.
7. The destination location of telephone calls made by the Custodian for the following dates in 2011: May 2, 3, 4, 5, 6, 9, 10, 12, 13, 18, 19, 20, 23, 24, 26, and 30.
8. The destination location of telephone calls received by the Custodian for the following dates in 2011: May 2, 3, 4, 5, 6, 9, 10, 12, 13, 18, 19, 20, 23, 24, 26, and 30.

The Complainant notes that he is willing to accept the entire month for each item for convenience.

#### August 16, 2011 OPRA request

1. The destination location of telephone calls made by the Custodian for the following dates in 2011: July 5, 7, 8, 11, 12, 14, 18, 19, 20, 21, 22, 25, 26, 27, and 28.
2. The destination location of telephone calls received by the Custodian for the following dates in 2011: July 5, 7, 8, 11, 12, 14, 18, 19, 20, 21, 22, 25, 26, 27, and 28.

The Complainant notes that he is willing to accept the entire month of July for convenience.

**Custodian of Record:** Donald E. Kazar

**Request Received by Custodian:** July 28, 2011, August 9, 2011, August 14, 2011, and August 16, 2011

**Response Made by Custodian:** August 8, 2011, August 10, 2011, and August 17, 2011

**GRC Complaint Received:** August 22, 2011

#### Background

##### December 18, 2012 Council Meeting:

At its December 18, 2012, public meeting, the Council considered the October 23, 2012, Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. By a majority vote, the Council adopted said findings and recommendations. The Council, therefore, found that:

[B]ased on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law

for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

#### Procedural History:

On December 19, 2012, the Council distributed its Interim Order to all parties. On May 1, 2013, the complaint was transmitted to the Office of Administrative Law (“OAL”). On June 2, 2015, the Honorable Solomon A. Metzger, Administrative Law Judge (“ALJ”), issued an Initial Decision in this matter.

#### Exceptions

On June 15, 2015, the Complainant’s Counsel filed exceptions to the ALJ’s Initial Decision, requesting that the GRC: 1) reject the Initial Decision in its entirety and 2) remand this complaint back to OAL for a plenary hearing.

The Complainant’s Counsel stated that this complaint was referred to the OAL for a fact-finding hearing but that the ALJ granted the Custodian’s motion to dismiss without conducting a hearing. The Complainant’s Counsel asserted that the ALJ reached his decision by reasoning that no set of facts existed under which he could have found that call locations on the Custodian’s personal cell phone bill are “government records” for purposes of OPRA.

However, the Complainant’s Counsel argued that the ALJ decided this case without any certifications or proofs regarding the Custodian’s cell phone usage or dispute of the facts submitted by the Complainant. Specifically, the Complainant’s Counsel argued that, in an e-mail dated April 27, 2006, the Custodian admitted the he sometimes uses his personal cell phone for public business. Further, the Complainant’s Counsel asserted that a contract between Cooper and Cooper listed the Custodian’s personal cell phone as his contact number. The Complainant’s Counsel argued that this evidence raised contested facts as to the degree that the Custodian utilized his personal cell phone for public business, as well as the extent to which his personal phone records reflect public business. The Complainant’s Counsel contended that, at a minimum, the OAL should have held a hearing to explore these issues through testimony and documentary evidence.

### Analysis

#### Administrative Law Judge’s Initial Decision

The ALJ’s findings of fact are entitled to deference from the GRC because they are based upon the ALJ’s determination of the credibility of the parties. “The reason for the rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility.” In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div. 1989), *certif. denied* 121 N.J. 615 (1990). The Appellate Division affirmed this principle,

underscoring that, “under existing law, the [reviewing agency] must recognize and give due weight to the ALJ’s unique position and ability to make demeanor-based judgments.” Whasun Lee v. Bd. of Educ. of the Twp. of Holmdel, Docket No. A-5978-98T2 (App. Div. 2000), slip op. at 14. “When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ’s credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole.” Cavalieri v. Bd. of Tr. of Pub. Emp. Ret. Sys., 368 N.J. Super. 527, 537 (App. Div. 2004).

The ultimate determination of the agency and the ALJ’s recommendations must be accompanied by basic findings of fact sufficient to support them. State, Dep’t of Health v. Tegnazian, 194 N.J. Super. 435, 442-43 (App. Div. 1984). The purpose of such findings “is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefor.” Id. at 443. Additionally, the sufficiency of evidence “must take into account whatever in the record fairly detracts from its weight”; the test is not for the courts to read only one side of the case and, if they find any evidence there, the action is to be sustained and the record to the contrary is to be ignored (citation omitted). St. Vincent’s Hosp. v. Finley, 154 N.J. Super. 24, 31 (App. Div. 1977).

In his Initial Decision, dated June 2, 2015, and set forth as “Exhibit A,” the ALJ determined that:

[The Court is] bound for purposes of the motion to take as accurate [the Complainant’s] observation that this is ongoing. The difficulty, however[,] remains the same. The mere use of a private cell phone at work to make private calls does not trigger the statute. This is not to condone non-work related phone use on public time. That issue; however, is for the Borough. It has means by which to observe and discipline its employees.

...

It is arguable that calls on a private cell phone involving public business might fall within the ambit of OPRA. Nonetheless, the [Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009)] criteria militate against disclosure.

...

[The Complainant’s] motion is **DENIED**; [the Custodian’s] motion is **GRANTED**. This matter is **DISMISSED**.

Id. at 3-4.

On June 12, 2015, the Complainant’s Counsel submitted exceptions, arguing that the ALJ should have conducted a plenary hearing to determine whether the Custodian utilized his personal cell phone for business purposes and thus should have disclosed the responsive phone bills. Based on the ALJ’s holding that personal cell phone bills are not “government records” for

purposes of OPRA, the GRC rejects the Complainant's exceptions. The ALJ also addressed the issue of possible public business usage. However, the ALJ reasoned that a basic privacy test did not weigh in favor of disclosure of personal cell phone bills simply because the Custodian may have used a personal cell phone on occasion.

Here, the ALJ fairly summarized the evidence submitted by parties in their motions, explaining how he weighed the proofs before him. The ALJ's conclusions are clearly aligned and consistent with the evidence of record. As such, the GRC is satisfied that it can ascertain which testimony the ALJ accepted as fact and finds that those facts provide a reasonable basis for the ALJ's conclusions.

Therefore, because the Complainant has otherwise failed to provide any legal basis for the GRC to reject the ALJ's findings, the Council should accept the ALJ's Initial decision to dismiss the complaint because "[t]he mere use of a private cell phone at work to make private calls does not trigger . . ." OPRA and that the Burnett criteria militate against disclosure of work-related calls that the Custodian made from his private cell phone. Accordingly, "[the Complainant's] motion is **DENIED**; [the Custodian's] motion is **GRANTED**. This matter is **DISMISSED**."

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant has failed to provide any legal basis for the GRC to reject the Administrative Law Judge's findings and that the Council accept the ALJ's Initial Decision, dated June 2, 2015, to dismiss the complaint because "[t]he mere use of a private cell phone at work to make private calls does not trigger . . ." OPRA and that the Burnett criteria militate against disclosure of work-related calls that the Custodian made from his private cell phone. Accordingly, "[the Complainant's] motion is **DENIED**; [the Custodian's] motion is **GRANTED**. This matter is **DISMISSED**."

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover  
Executive Director

June 23, 2015



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. GRC 6463-13

AGENCY DKT. NO. 2011-280

**ROBERT A. VERRY,**

Petitioner,

v.

**BOROUGH OF SOUTH BOUND**

**BROOK (SOMERSET),**

Respondent.

---

**Walter M. Luers, Esq.,** for petitioner (Law Offices of Walter M. Luers, attorneys)

**Robert G. Wilson, Esq.,** for respondent (Kovacs and Wilson, attorneys)

Record Closed: May 5, 2015

Decided: June 2, 2015

BEFORE **SOLOMON A. METZGER**, ALJ t/a:

This matter arises out of a complaint filed by Robert A. Verry with the Government Records Council, alleging that respondent improperly denied his request for access to cell phone records under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. The Council transmitted the matter to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The parties have filed cross-motions for summary decision, N.J.A.C. 1:1-12.5; Brill v. Guardian Life Ins. Co. of Amer., 142 N.J. 520 (1995).

Mr. Verry is a retired police chief in South Bound Brook. Donald Kazar is the part-time Borough clerk, who also operates a private catering business. Mr. Verry certifies to personal knowledge that Mr. Kazar routinely uses his private cell phone while at work to manage his catering business and that this interferes with his conduct of public affairs. Mr. Verry believes Mr. Kazar also uses his private cell phone to conduct public business and notes that a law firm providing services to the Borough listed Mr. Kazar as a reference using his private cell number. Mr. Verry seeks destination location data for calls made and received during specified work dates spanning multiple months. Mr. Kazar acknowledges that he does on occasion use his personal cell phone to attend to private business while at the office, but that this is atypical. This is the substance of the record.

The questions presented are whether portions of Mr. Kazar's private cell phone bills can under these circumstances constitute public records, and if so whether on balancing the public right to know against privacy interests, the records should be disclosed.

North Jersey Newspapers Co. v. Passaic County Board of Freeholders, 127 N.J. 9 (1992), is a case that arose under OPRA's predecessor the Right-to-Know Law. There the Supreme Court weighed questions of access and privacy as relates to public telephone records. The court held that there is no unqualified right of access. Certain classes of private information need not be made public simply because government in the age of computing has a ready means of collecting it. The Court observed that telephone use is particularly entwined with expectations of privacy. With this general approach in mind each side then finds support in Livecchia v. Borough of Mount Arlington, 421 N.J. Super. 24 (App. Div. 2011). Petitioner there was interested in knowing whether public cell phones were, among other things, being used to make personal calls. The Court required disclosure of the destination location of these calls. In weighing the privacy interest of employees in destination location data against the OPRA preference for disclosure, the Court favored the latter, referencing criteria used in Burnett v. County of Bergen, 198 N.J. 408 (2009) and Doe v. Poritz, 142 N.J. 1



(1995). Petitioner focuses on the fact that destination location records were released; respondent counters that the cell phones in Livecchia, belonged to the municipality and it paid the bills. Although these precedents are not directly on our point, it is useful to observe the care taken when an OPRA request also treads on questions of privacy.

Our facts involve the use of Mr. Kazar's personal cell phone; he pays the charges and is not reimbursed by the Borough. The distinction is fundamental. Given the portability and ubiquity of cell phones, it is no leap to suggest that they are commonly used in public work spaces under a variety of conditions. Petitioner posits that destination location data from such conversations are public when they occur during work time. The plain language of the statute is not supportive. N.J.S.A. 47:1A-1.1 defines the term "government records" to include writings and recordings of assorted design generated by public employees in the course of official business. In large measure the records petitioner seeks are by his own assessment not part of official business; they are calls about catering.

There is a Brill fact dispute here as to how often the Borough clerk uses his cell phone at work for private business. We are bound for purposes of the motion to take as accurate petitioner's observation that this is ongoing. The difficulty, however remains the same. The mere use of a private cell phone at work to make private calls does not trigger the statute. This is not to condone non-work related phone use on public time. That issue; however, is for the Borough. It has means by which to observe and discipline its employees.

Intermingled with the broader request for data relating to private catering calls are general references to Mr. Kazar's cell phone use for public business. This inquiry draws us nearer to the holding in Livecchia. Mr. Kazar is the Borough clerk and much Borough business likely transpires through him. It is arguable that calls on a private cell phone involving public business might fall within the ambit of OPRA. Nonetheless, the Burnett criteria militate against disclosure. Among the factors to be considered are the nature of the material sought and the requestor's use for them. Petitioner's certification focuses on his need to illustrate Mr. Kazar's over-involvement in personal affairs to the

detriment of his public duties. Having rejected that aspect of the request, it is not apparent why petitioner needs business-related destination location data from this cell phone. Counsel in his brief conjectures that the use of a private cell phone for public business is suspicious, but nothing in the motion record supports this. Private cell phone records are not routinely subject to OPRA, indeed, no precedent has been cited examining the point. The requestor's purpose should therefore be fairly compelling. In his application before the Council petitioner appears to argue that even one public call on a private cell phone opens the entire record to scrutiny. This values privacy lightly and in its sweep would ensnare many an unwary public employee. The legislature evinced a different motivation when it instructed public instrumentalities to safeguard privacy under OPRA, N.J.S.A. 47:1A-1.

Based on the foregoing, petitioner's motion is **DENIED**; respondent's motion is **GRANTED**. This matter is **DISMISSED**.

I hereby **FILE** my initial decision with the **GOVERNMENT RECORDS COUNCIL** for consideration.

This recommended decision may be adopted, modified or rejected by the **GOVERNMENT RECORDS COUNCIL**, who by law is authorized to make a final decision in this matter. If the Government Records Council does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE GOVERNMENT RECORDS COUNCIL, 101 South Broad Street, PO Box 819, Trenton, New Jersey 08625-0819**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



June 2, 2015  
DATE

\_\_\_\_\_  
**SOLOMON A. METZGER, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

mph



**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**

**December 18, 2012 Government Records Council Meeting**

Robert A. Verry  
Complainant

Complaint No. 2011-280

v.

Borough of South Bound Brook (Somerset)  
Custodian of Record

At the December 18, 2012 public meeting, the Government Records Council (“Council”) considered the October 23, 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 based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the  
Government Records Council  
On The 18<sup>th</sup> Day of December, 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: December 19, 2012**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
December 18, 2012 Council Meeting**

**Robert A. Verry<sup>1</sup>  
Complainant**

**GRC Complaint No. 2011-280**

v.

**Borough of South Bound Brook (Somerset)<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Regarding a cell phone<sup>3</sup> used by the Custodian for official Borough of South Bound Brook (“Borough”) business:

July 28, 2011 OPRA request<sup>4</sup>

1. The destination location of telephone calls made by the Custodian from June 19, 2010 to June 30, 2011.
2. The destination location of telephone calls received by the Custodian from June 19, 2010 to June 30, 2011.
3. The destination location of telephone calls made by the Custodian from February 19, 2008 to March 10, 2008.
4. The destination location of telephone calls received by the Custodian from February 19, 2008 to March 10, 2008.

August 9, 2011 OPRA request

1. The destination location of telephone calls made by the Custodian for the following dates: June 14, 2011, June 15, 2011 and June 16, 2011.
2. The destination location of telephone calls received by the Custodian for the following dates: June 14, 2011, June 15, 2011 and June 16, 2011.

August 14, 2011 OPRA request<sup>5</sup>

1. The destination location of telephone calls made by the Custodian for the following dates in 2011: February 1, 2, 4, 7, 8, 9, 10, 11, 14, 15, 16, 18, 21, 22, 23, 24 and 28.

---

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

<sup>2</sup> Represented by Francis P. Linnus, Esq. (Somerset, NJ).

<sup>3</sup> The Complainant identifies the specific telephone number in each OPRA request.

<sup>4</sup> The Complainant submitted two (2) OPRA requests; however, the GRC has consolidated them into one (1) request in the interest of clarity.

<sup>5</sup> The Complainant submitted four (4) OPRA requests; however, the GRC has consolidated them into one (1) request in the interest of clarity.

2. The destination location of telephone calls received by the Custodian for the following dates in 2011: February 1, 2, 4, 7, 8, 9, 10, 11, 14, 15, 16, 18, 21, 22, 23, 24 and 28.
3. The destination location of telephone calls made by the Custodian for the following dates in 2011: March 1, 2, 3, 4, 7, 8, 9, 10, 16, 18, 21, 22, 23, 24, 25, 28, 29, 30 and 31.
4. The destination location of telephone calls received by the Custodian for the following dates in 2011: March 1, 2, 3, 4, 7, 8, 9, 10, 16, 18, 21, 22, 23, 24, 25, 28, 29, 30 and 31.
5. The destination location of telephone calls made by the Custodian for the following dates in 2011: April 1, 4, 5, 6, 8, 11, 12, 15, 18, 20, 25, 26, 27 and 28.
6. The destination location of telephone calls received by the Custodian for the following dates in 2011: April 1, 4, 5, 6, 8, 11, 12, 15, 18, 20, 25, 26, 27 and 28.
7. The destination location of telephone calls made by the Custodian for the following dates in 2011: May 2, 3, 4, 5, 6, 9, 10, 12, 13, 18, 19, 20, 23, 24, 26 and 30.
8. The destination location of telephone calls received by the Custodian for the following dates in 2011: May 2, 3, 4, 5, 6, 9, 10, 12, 13, 18, 19, 20, 23, 24, 26 and 30.

The Complainant notes that he is willing to accept the entire month for each item for convenience.

#### August 16, 2011 OPRA request

1. The destination location of telephone calls made by the Custodian for the following dates in 2011: July 5, 7, 8, 11, 12, 14, 18, 19, 20, 21, 22, 25, 26, 27 and 28.
2. The destination location of telephone calls received by the Custodian for the following dates in 2011: July 5, 7, 8, 11, 12, 14, 18, 19, 20, 21, 22, 25, 26, 27 and 28.

The Complainant notes that he is willing to accept the entire month for of July for convenience.

**Request Made:** July 28, 2011, August 9, 2011, August 14, 2011 and August 16, 2011

**Response Made:** August 8, 2011, August 10, 2011 and August 17, 2011

**Custodian:** Donald E. Kazar

**GRC Complaint Filed:** August 22, 2011<sup>6</sup>

### Background

#### **July 28, 2011**

Complainant's first (1<sup>st</sup>) Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in a letter

---

<sup>6</sup> The GRC received the Denial of Access Complaint on said date.

referencing OPRA. The Complainant indicates that the preferred method of delivery is e-mail or facsimile only if the record is not available electronically.

### **August 8, 2011**

Custodian's response to the first (1<sup>st</sup>) OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the seventh (7<sup>th</sup>) business day following receipt of such request. The Custodian states that access to the requested records is denied because no record responsive exists. The Custodian states that his number is private and not paid for by the Borough. The Custodian states that according to North Jersey Newspaper Co. v. Passaic County Board of Chosen Freeholders, 127 N.J. 9 (1992), the destination of calls placed by municipal employees on their government-issued cell phones is subject to disclosure. The Custodian reiterates that his cell phone is private.

### **August 9, 2011**

E-mail from the Complainant to the Custodian. The Complainant states that in North Jersey, *supra*, the Court reasoned that "[i]f determining the identity of callers becomes necessary to prevent possible misuse of public funds ... a court may require preliminary disclosure to it of the identity of the persons called and the public nature of the calls." (Citation omitted.) *Id.* at 112-113. The Complainant contends that this case actually supports disclosure. The Complainant further states that in Livecchia v. Borough of Mount Arlington, 421 N.J. Super. 24 (App. Div. 2011), the Appellate Division held that:

"[m]unicipal employees are public servants. Rooting out the possible misuse of the public fisc and abuse of the taxpayer's trust is the bedrock upon which OPRA rests ... the privacy interest attached to government telephone records, which protects the person called and his or her telephone number, does not similarly cloak the destination location of calls placed by government employees when necessary to advance the watchful eye of a vigilant public seeking accountability of its municipal representatives. OPRA does not permit redaction of such information. N.J.S.A. 47:1A-5(g). Accordingly, we conclude the GRC properly ordered the Borough to release the cell phone records, redacting only the numbers called." *Id.* at 19.

The Complainant asserts that the Custodian uses his personal cell phone to conduct Borough business. The Complainant contends that he is seeking accountability toward the prevention of possible misuse of public funds and thus seeks the disclosure of destination locations. The Complainant states that the Custodian is required to disclose records.

The Complainant states that he will allow the Custodian 24 hours to reconsider his denial of access before the Complainant is forced to weigh his possible relief from the denial of access.

### **August 9, 2011**

E-mail from the Custodian to the Complainant. The Custodian reiterates that his personal cell phone bills are not government records. The Custodian further reiterates that

the Borough maintains no records of his personal cell phone. The Custodian states that he does not use his cell phone for Borough business as he has an office number available for official Borough business.

**August 9, 2011**

Complainant's second (2<sup>nd</sup>) 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.

**August 10, 2011**

E-mail from the Complainant to the Custodian. The Complainant contends that not physically possessing at the Borough the bills of a personal cell phone that the Custodian has used for years to conduct Borough business is not a lawful basis for denying access to said records. *See Meyers v. Borough of Fairlawn*, GRC Complaint No. 2005-127 (Interim Order dated December 8, 2005)(holding that the location of the record does not inhibit a custodian from obtaining same and providing access). The Complainant again contends that in this case, the Custodian makes and receives calls related to official Borough business on his personal cell phone and thus the records should be disclosed.

The Complainant states that because the Custodian's records are at issue, the Custodian should consider recusing himself from responding to the request and assign a deputy custodian if he feels that he cannot respond with impartiality. The Complainant further suggests that whoever handles the request should seek legal advice and/or contact the GRC.<sup>7</sup>

**August 10, 2011**

Custodian's response to the second (2<sup>nd</sup>) OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the first (1<sup>st</sup>) business day following receipt of such request. The Custodian states that he knows the Complainant is seeking something specific but that he will not provide a personal phone bill for a phone he uses for his private business. The Custodian states that these bills are not government records. The Custodian notes that if this were the case, he should be able to obtain every police officer's personal cell phone records if they called the Police Headquarters on a personal cell phone during work.

The Custodian states that he stands by his response to the Complainant's first (1<sup>st</sup>) OPRA request that the responsive records do not exist.

**August 14, 2011**

Complainant's third (3<sup>rd</sup>) 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.

---

<sup>7</sup> The Complainant also notes that his first (1<sup>st</sup>) request was also filed under the common law right of access; therefore, he expects that the Custodian will apply both OPRA and common law to his request. Robert A. Verry v. Borough of South Bound Brook (Somerset), 2011-280 – Findings and Recommendations of the Executive Director 4



**August 16, 2011**

Complainant's fourth (4<sup>th</sup>) 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.

**August 17, 2011**

Custodian's response to the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) OPRA requests. The Custodian responds in writing via e-mail, to the Complainant's two (2) OPRA requests on the second (2<sup>nd</sup>) and first (1<sup>st</sup>) business day respectively following receipt of such requests. The Custodian states that access to the requested records is denied because the Borough possesses no responsive records.

The Custodian states that OPRA defines a government record as a record that is "... made, maintained or kept on file ... or that has been received in the course of ... official business." N.J.S.A. 47:1A-1.1. The Custodian states that his personal cell phone is not used to conduct official Borough business. The Custodian provides the Complainant with his office number.

**August 22, 2011**

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

- Complainant's first (1<sup>st</sup>) OPRA request dated July 28, 2011.
- E-mail from the Custodian to the Complainant dated August 8, 2011.
- E-mail from the Complainant to the Custodian dated August 9, 2011.
- E-mail from the Custodian to the Complainant dated August 9, 2011.
- Complainant's second (2<sup>nd</sup>) OPRA request dated August 9, 2011.
- E-mail from the Complainant to the Custodian dated August 10, 2011.
- E-mail from the Custodian to the Complainant dated August 10, 2011.
- Complainant's third (3<sup>rd</sup>) OPRA request dated August 14, 2011.
- Complainant's fourth (4<sup>th</sup>) OPRA request dated August 16, 2011.
- E-mail from the Custodian to the Complainant dated August 17, 2011.
- Custodian's time sheets from January 24, 2011 through July 17, 2011.

The Complainant states that since or before the calendar year of 2004, the Custodian has utilized his personal cell phone to make and receive calls regarding official Borough business. The Complainant asserts that over the years, he has witnessed the Custodian make calls, receive calls and even he made calls to the Custodian's personal cell phone. The Complainant further asserts that he has witnessed the Custodian make and receive private calls and business calls while at work.

The Complainant states that in June 2011, the Custodian allegedly failed to process the Borough's employees' pension, health and dental bills for the previous 6 months. The Complainant states that at the July 12, 2011 Borough Council meeting, a councilman noted that possible delay in processing the bills was that the Custodian has been overwhelmed by OPRA requests over the past few years and may need a part-time

worker to assist him. The Complainant argues that his research indicates otherwise. The Complainant asserts that the Custodian receives an average of 15 OPRA requests a month for similar identifiable government records; however, the Custodian commonly denies the requests by determining they are overly broad. The Complainant contends that for this reason, OPRA requests must be submitted individually to avoid the overly broad denial of access. The Complainant further alleges that the Custodian knowingly and willfully forces requestors to submit individual OPRA requests so that he may argue that he is being swamped by requests when confronted about failing to do his own work.

The Complainant contends that in light of the foregoing, the Complainant seeks the responsive records based on his personal knowledge that the Custodian makes and receives personal calls from his personal cell phone while at work. The Complainant argues that disclosure is necessary to ensure that taxpayers' funds are not being misused and to ensure that these calls are not the actual reason why the Custodian is failing to complete his duties.

The Complainant further argues that the Custodian should have recused himself from responding to the Complainant's OPRA requests because of his personal relationship to the records at issue. The Complainant disputes the Custodian's contention that no records responsive exist simply because same are not maintained at the Borough. The Complainant further contends that even a single personal call made or received during the course of official business is grounds for disclosure to ensure that no taxpayer funds are being misused. The Complainant notes that the Court in Livecchia, *supra*, held that a custodian's claim of privacy "... may be overcome by a requestor's reasonable need for the information to challenge the misuse of public funds." *Id.* at 24.

The Complainant contends that his four (4) OPRA requests seeking only the destination location for calls made or received during the identified time frames are consistent with Livecchia, *supra*. The Complainant contends that if the Custodian truly did not make or receive any calls regarding official business, there should be no calls made during the Custodian's work hours. The Complainant further argues that at the very least, the GRC should conduct an *in camera* review of the phone bills to ensure calls were made during work hours and order disclosure accordingly. The Complainant asserts that if the Custodian has nothing to hide, he should not be so adverse to disclosing the responsive records. The Complainant thus requests the following:

1. A determination that the Custodian unlawfully denied access to the responsive records.
2. A determination ordering disclosure of the responsive records.
3. A determination that the Custodian knowingly and willfully violated OPRA under the totality of the circumstances. N.J.S.A. 47:1A-11.

The Complainant notes that the Custodian has a long history of violating OPRA and cites to 16 different complaints in which the Custodian was found to have violated OPRA in some way. The Complainant contends that at some point, the GRC needs to take into account the Custodian's long history of violating OPRA and find that these repeated violations amount to a knowing and willful violation of OPRA.

The Complainant does not agree to mediate this complaint.

**August 25, 2011**

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

**August 29, 2011**

E-mail from the Custodian to the GRC. The Custodian requests an extension of time until September 9, 2011 due to the recent storm to hit the area.

**August 31, 2011**

E-mail from the GRC to the Custodian. The GRC grants the Custodian an extension of time until September 9, 2011 to submit the SOI.

**September 9, 2011<sup>8</sup>**

Custodian’s SOI with the following attachments:

- Complainant’s first (1<sup>st</sup>) OPRA request dated July 28, 2011.
- E-mail from the Custodian to the Complainant dated August 8, 2011.
- E-mail from the Complainant to the Custodian dated August 9, 2011.
- E-mail from the Custodian to the Complainant dated August 9, 2011.
- Complainant’s second (2<sup>nd</sup>) OPRA request dated August 9, 2011.
- E-mail from the Complainant to the Custodian dated August 10, 2011.
- E-mail from the Custodian to the Complainant dated August 10, 2011.
- Complainant’s third (3<sup>rd</sup>) OPRA request dated August 14, 2011.
- Complainant’s fourth (4<sup>th</sup>) OPRA request dated August 16, 2011.
- E-mail from the Custodian to the Complainant dated August 17, 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 because the Borough does not maintain the requested records.

The Custodian certifies that he received the Complainant’s four (4) OPRA requests on July 28, 2011, August 9, 2011, August 14, 2011 and August 16, 2011. The Custodian certifies that he responded in writing on August 8, 2011, August 10, 2011 and August 17, 2011 denying access to said requests stating that no records exist or are maintained by the Borough.

The Custodian’s Counsel submits a letter brief in support of the Custodian’s position and recapitulates the facts of the instant complaint. Counsel states that the Complainant is alleging that because he has personal knowledge that the Custodian used his personal cell phone for personal calls during work hours, the Complainant’s interest in disclosure outweighs the Custodian’s grant of confidentiality. Counsel notes that the Custodian acknowledged that he has on occasion used his cell phone to conduct official

---

<sup>8</sup> 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).  
Robert A. Verry v. Borough of South Bound Brook (Somerset), 2011-280 – Findings and Recommendations of the Executive Director 7

business in emergency situations. Counsel asserts OPRA, however, contains no mandate requiring disclosure of personal phone records because a government employee used same while at work. Counsel asserts that the Complainant's remedy from this situation is beyond the authority of the GRC.

Counsel states that 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 ..." N.J.S.A. 47:1A-1.1.

Counsel asserts that the cell phone records at issue herein may constitute government records as defined under OPRA; however, the New Jersey Supreme Court has cautioned that there is no unqualified right to access billing records of public officials due to expectations of privacy. *See North Jersey, supra* (holding that itemized telephone bills for long distance and car phone calls from publically owned phones did not constitute public records under OPRA). Counsel states that the Appellate Division in Livecchia ordered disclosure of bills from municipally owned phones with redactions to only show the city and state of the person called. Counsel further notes that in Meyers v. Borough of Fairlawn, GRC Complaint No. 2005-127 (Interim Order dated December 8, 2005), the Council determined that e-mails of a public official regarding official business from a personal e-mail account were subject to disclosure under OPRA.

Counsel contends that the instant matter is factually different from both Livecchia and Meyers in that the phone bills at issue herein are for the Custodian's personal cell phone. Counsel asserts that the phone is not paid for by the Borough, as was the case in Livecchia. Counsel further asserts that the nature of the communications on the phone were generally private, as opposed to the e-mails conducting official business in Meyers. Counsel contends that records of the Custodian's privately owned personal cell phone are not made, maintained or stored in the regular course of government business and in no sense meet the statutory definition of a government record under OPRA.

Counsel asserts that the Council would be grossly violating the Custodian privacy interest by ordering disclosure of these records. Counsel further argues that ordering disclosure will also set a precedent of eroding the privacy rights of all public officials.

### **September 11, 2011**

E-mail from the Complainant to the GRC. The Complainant states that the GRC granted the Custodian an extension of time until September 9, 2011 to submit the SOI. The Complainant asserts that the Custodian either refused to or failed to submit the SOI before this deadline.

**September 12, 2011**

E-mail from Mr. Benjamin T. Wetzel, Esq. (“Mr. Wetzel”) to the Complainant. Mr. Wetzel states that he e-mailed the Complainant the SOI on September 9, 2011 and also sent a copy via U.S. Mail.

**September 19, 2011**

Letter from the Complainant to the GRC with the following attachments:

- E-mail from the Custodian to the Complainant dated April 27, 2006.
- 2011 “Request for Proposal” (“RFP”) submitted by Mr. William T. Cooper, III, Esq. (“Mr. Cooper”).
- E-mail from the Custodian to the Complainant dated August 14, 2011.
- E-mail from the Custodian to the Complainant dated September 13, 2011.<sup>9</sup>
- Custodian’s SOI dated September 9, 2011.

The Complainant asserts that he never received Mr. Wetzel’s e-mail, but did receive a copy of the SOI in the mail and offers the following rebuttal.

The Complainant reiterates that he believes the requested records are subject to disclosure under OPRA. The Complainant states that in an e-mail dated August 14, 2011, the Custodian denied access noting that he does not use his cell phone for official business; however, the Complainant admits in the SOI that he has on occasion used his personal cell phone to confer with Borough employees on an emergency basis. The Complainant contends that the Custodian thus knowingly and willfully lied either in his August 14, 2011 e-mail or in the SOI because both statements cannot be true. The Complainant asserts that the GRC should thus apply the principle found in State v Ernst, 32 N.J. 567, 583 (1960) of “false in one, false in all” to all of the Custodian’s submissions in the instant complaint.

The Complainant asserts that in order to quash the Custodian’s denial of access, he refers the GRC to Mr. Cooper’s 2011 RFP where Mr. Cooper lists the Custodian as Administrator for the Borough with the Borough’s address and Custodian’s personal cell phone number as the non-emergency contact number. The Complainant further notes that the Custodian admits in a 2006 e-mail that he called the Complainant, who was still employed by the Borough at that time, “all the time from my cell phone.” The Complainant asserts that he has other examples, but believes these two (2) examples provide enough evidence that the Custodian uses his personal cell phone for official and unofficial business.

The Complainant further contends that Counsel’s argument in the SOI that the Custodian “... not generally ...” use his cell phone for official business is also false in light of the Custodian’s outright denial of using his cell phone for official business in his August 14, 2011 e-mail to the Complainant. The Complainant contends that this evidence supports a conclusion that the responsive phone bills containing destination locations for all phone calls is disclosable under OPRA pursuant to N.J.S.A. 47:1A-1.1.

---

<sup>9</sup> The GRC has not included this e-mail in the background because it contains no new arguments or evidence.

The Complainant further contends that the GRC should replace the term “e-mail” found in Meyers with the term “phone” and apply its decision that the location of a government record is of no moment to this complaint. The Complainant further argues that the Custodian should have been maintaining his own personal cell phone bills “... in the course of ... official business ...” because he admitted to making Borough-related phone calls on his cell phone.

The Complainant further contends that the evidence of record indicates that the Custodian purposely used his personal cell phone for Borough business in an effort to prevent elected officials, his supervisors and citizens from:

1. Holding him accountable for his actions.
2. Examining phone calls the Custodian made while on-duty and getting paid by the taxpayers.
3. Gaining access to the phone calls he made that involved Borough business.

The Complainant contends that this motive is reinforced by Counsel’s SOI argument that there is no mandate in OPRA requiring disclosure of records of personal phone calls made from personal phones while at work. The Complainant contends that under the Custodian and Counsel’s logic, a custodian could simply use a prepaid cell phone and private e-mail address to circumvent OPRA: accepting this position would eliminate transparency in government.

The Complainant states that in a September 13, 2011 e-mail to him, the Custodian asked them Complainant if he was “... going to ask for all the cops who use their phone for police business. Let me know and I will ask for [these] bills also.” The Complainant contends that the Custodian is willing to disclose those phone records because they were made for official Borough business, but is willing to deny access to his own records.<sup>10</sup> The Complainant further contends that his position is further reinforced by the fact that members of the Borough Council did not receive copies of the instant complaint until after the date of this e-mail.<sup>11</sup>

The Complainant thus reiterates his requests for relief from the Denial of Access Complaint

### **Analysis**

#### **Whether the Custodian unlawfully denied access to the requested records?**

OPRA provides that:

---

<sup>10</sup> The Complainant further argues that other comments made by the Custodian in this e-mail force the Complainant to believe that the Custodian is using his official position for a private cause.

<sup>11</sup> The Complainant submits additional arguments that are either not relevant to the instant complaint or beyond the Council’s authority to adjudicate.

“...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.

In the matter before the Council, the Complainant requested billing records of the personal cell phone used by the Custodian. The Custodian denied access to the requested records on the grounds that no record responsive exists. The Custodian also stated that his number is private and not paid for by the Borough. The Complainant contended that not physically possessing at the Borough the bills of a personal cell phone that the Custodian has used for years to conduct Borough business is not a lawful basis for denying access to said records, and contended that in this case, the Custodian makes and receives calls related to official Borough business on his personal cell phone and thus the records should be disclosed. The Complainant argued that disclosure is necessary to ensure that taxpayers’ funds are not being misused and to ensure that these calls are not the actual reason why the Custodian is failing to complete his duties.

On the other hand, the Custodian’s Counsel submitted a letter brief as part of the SOI in which Counsel stated that the Custodian acknowledged that he has on occasion used his cell phone to conduct official business in emergency situations. Moreover, Counsel stated that the Complainant is alleging that because he has personal knowledge that the Custodian used his personal cell phone for personal calls during work hours, the Complainant’s interest in disclosure outweighs the Custodian’s grant of confidentiality. Counsel noted that Counsel asserts OPRA, however, contains no mandate requiring disclosure of personal phone records because a government employee used same while at work. Counsel asserted that the Complainant’s remedy from this situation is beyond the authority of the GRC.

The New Jersey Rules of Evidence set forth three standards of proof: a preponderance of the evidence, clear and convincing evidence, and proof beyond a reasonable doubt. N.J.R.E. 101(b)(1). A preponderance of the evidence is “the usual burden of proof for establishing claims before state agencies in contested administrative adjudications.” In re Polk License Revocation, 90 N.J. 550, 560, 449 A.2d 7 (1982).

Under the preponderance standard, “a litigant must establish that a desired inference is more probable than not. If the evidence is in equipoise, the burden has not been met.” Biunno, Current N.J. Rules of Evidence, comment 5a on N.J.R.E. 101(b)(1) (2005); *see also McCormick on Evidence*, § 339 (“The most acceptable meaning to be given to the expression, proof by a preponderance, seems to be proof which leads the jury to find that the existence of the contested fact is more probable than its nonexistence.”).

Neither party has submitted to the GRC sufficient competent, credible evidence to support their contentions, either in the form of a legal certification or any other documentary evidence. Based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. Also, this complaint should be referred to the Office of Administrative Law for determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Karyn Gordon, Esq.  
Acting Executive Director

October 23, 2012<sup>12</sup>

---

<sup>12</sup> This complaint was prepared and scheduled for adjudication at the Council’s October 30, 2012 meeting; however, said meeting was cancelled due to Hurricane Sandy. Additionally, the Council’s November 27, 2012 meeting was cancelled due to lack of quorum.