



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

July 29, 2014 Government Records Council Meeting

Joseph Krrywda
Complainant

Complaint Nos. 2011-285 and 2011-307

v.

Pinelands Regional School District (Ocean)
Custodian of Record

At the July 29, 2014 public meeting, the Government Records Council (“Council”) considered the July 22, 2014 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 because the Complainant’s argument set forth in his exceptions is outweighed by the credible evidence adduced during the hearing at OAL and Custodian’s July 17, 2014 certification, and because the Complainant has failed to otherwise provide any legal basis for the GRC to reject the ALJ’s findings, the Council should accept said decision ordering that this complaint be dismissed because “. . . [the Custodian] did not knowingly and willfully violate OPRA . . . and is not in violation of the December 18, 2012, Interim Order.”

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 July, 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: July 31, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Joseph Krrywda¹
Complainant**

GRC Complaint Nos. 2011-285 and 2011-307²

v.

**Pinelands Regional School District (Ocean)³
Custodial Agency**

Records Relevant to Complaint:

GRC Complaint No. 2011-285

For the superintendent and business administrator, as well as all principals, vice-principals, teachers, supervisors, and athletic directors of the Pinelands Regional School District (“District”) their:

1. Certifications for the 2011-2012 school year assignments
2. Assurance Statement Form G (for teachers)
3. Résumés⁴

GRC Complaint No. 2011-307

1. All high school and middle school teacher certifications for their 2010-2011 assignments
2. All high school supervisor and athletic director certifications for their 2010-2011 assignments
3. All resumes for all 2010-2011 high school teachers, middle school teachers, high school supervisors, and athletic directors
4. The Assurance Statement Form G for all 2010-2011 high school teachers⁵

Custodian of Record: Stephen Brennan

Request Received by Custodian: August 19, 2011 and February 11, 2011

Response Made by Custodian: August 22, 2011 and February 22, 2011

GRC Complaint Received: September 3, 2011 and September 20, 2011

¹ No legal representation listed on record.

² The GRC combined these two (2) complaints when referring them to the Office of Administrative Law

³ Represented by Paul Kalac, Esq., of Schwartz, Simon, Edelstein & Celso, LLC (Whippany, NJ).

⁴ There were other records requested that are not relevant to this complaint.

⁵ There were other records requested that are not relevant to this complaint.

Background

January 29, 2013 Council Meeting:

At its January 29, 2013 public meeting, the Council considered the January 22, 2013 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, found that:

[B]ecause the Custodian failed to comply with the terms of the Council's Interim Order in a timely manner and informed the Complainant that the records ordered for disclosure will not be disclosed unless and until the Complainant assents to and pays a special service charge of \$250.00, and because the GRC did not have an opportunity to determine whether a special service charge was warranted in this complaint, and if so, the amount of said charge, it is necessary to refer this matter to the Office of Administrative Law to resolve the facts and render an opinion. Specifically, the Administrative Law Judge should determine whether the Custodian (a) complied in a timely manner with the Council's December 18, 2012 Interim Order, (b) correctly assessed the Complainant a special service charge, and if so, if he properly determined the amount of said charge, and (c) knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Procedural History:

On February 1, 2013, the Council distributed its Interim Order to all parties. On May 6, 2013, these complaints were transmitted to the Office of Administrative Law ("OAL"). On June 26, 2014, the Honorable Joseph A. Ascione, Administrative Law Judge ("ALJ"), issued an Initial Decision in this matter.

Exceptions

On July 2, 2014, the Complainant filed exceptions to the ALJ's decision contending that the GRC should reject that the Custodian did not knowingly and willfully violate OPRA. The Complainant contended that the Custodian initially stated that 800 pages of records responsive existed; however, he only provided 686 pages of records according to Invoice No. 2014-OPRA1. The Complainant asserted that the Custodian knowingly and willfully violated OPRA by failing to provide 114 additional pages.

On July 14, 2014, the GRC sought additional information. Specifically, the GRC requested the Custodian submit a certification answering the following:

1. Did "800" reference the number of pages or the number of documents responsive to the Complainant's OPRA request?
2. What was the actual number of records responsive (include total pages) to the Complainant's OPRA request?

3. If “800” was not the actual number of records responsive, how did the Custodian arrive at this number when calculating the proposed special service charge?

The GRC requested that the Custodian’s certification be provided by close of business on July 17, 2014.

On July 15, 2014, the Custodian requested an extension of time until July 25, 2014 to provide his legal certification. On July 16, 2014, the GRC granted said extension, but stressed the urgency of the situation based on the GRC’s requirement to accept, reject or modify the ALJ’s decision within 45 days of the decision date.

On July 17, 2014, the Custodian responded to the GRC’s request for additional information certifying to the following:

1. The 800 pages referred to in his January 2, 2013 letter to the Complainant was an estimated number of pages needed to copy and redact the responsive records. Specifically, his calculation was based on the number of employees the Complainant specified in his request and accounted for multiple certifications and resumes of more than one (1) page.
2. After duplication of the responsive records, the actual total was 686 pages as noted in Invoice No. 2014-OPRA1.
3. The calculation for 800 pages was the estimated number of employees (200) times the approximately four (4) pages per employee to determine the deposit on the estimated special service charge. This is because a teacher may have multiple certifications and resumes of more than one (1) page. The 800 pages was used as an estimate for the deposit only, but the actual final cost was \$314.30 for 686 pages of records, which the District forgave.

On July 21, 2014, the Complainant submitted a list of employees for which he argued he did not receive certifications, assurance statements and/or resumes.

On July 22, 2014, the Custodian noted several erroneous claims set forth by the Complainant. The Custodian further certified that if there are records missing from those provided, it is because those records were not included in the employees’ personnel files. Finally, the Custodian certified that he provided the Complainant all records required to be disclosed by the GRC in its December 18, 2012, Interim Order.

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).

The ALJ’s June 26, 2014 Initial Decision, set forth in full as “Exhibit A”, concluded that:

[T]he special service charge is reasonable and was not requested so as to subvert the intent to the OPRA . . . I **CONCLUDE** that the records were made available to the petitioner in a timely manner once the [Custodian] made the determination to waive the special service charge. Therefore, I **CONCLUDE** that [the Custodian] did not knowingly and willfully violate OPRA, did not unreasonably deny access to the records under the totality of the circumstances, and is not in violation of the December 18, 2012, Interim Order.

The GRC has taken into account the Complainant’s exceptions and Custodian’s certified replies. The GRC rejects the Complainant’s exceptions because it is satisfied that the disparity of 114 pages was related to the estimated special service charge prior to actual retrieval and reproduction of the responsive records. The GRC is further satisfied that the Custodian provided all records in existence free of charge notwithstanding that the proposed special service charge.

Therefore, because the Complainant’s argument set forth in his exceptions is outweighed by the credible evidence adduced during the hearing at OAL and Custodian’s July 17, 2014 certification, and because the Complainant has failed to otherwise provide any legal basis for the GRC to reject the ALJ’s findings, the Council should accept said decision ordering that this complaint be dismissed because “. . . [the Custodian] did not knowingly and willfully violate OPRA . . . and is not in violation of the December 18, 2012, Interim Order.”

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Complainant's argument set forth in his exceptions is outweighed by the credible evidence adduced during the hearing at OAL and Custodian's July 17, 2014 certification, and because the Complainant has failed to otherwise provide any legal basis for the GRC to reject the ALJ's findings, the Council should accept said decision ordering that this complaint be dismissed because ". . . [the Custodian] did not knowingly and willfully violate OPRA . . . and is not in violation of the December 18, 2012, Interim Order."

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Dawn R. SanFilippo, Esq.
Acting Executive Director

July 22, 2014



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
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CHRIS CHRISTIE
Governor

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RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

January 29, 2013 Government Records Council Meeting

Joseph Krrywda
Complainant

Complaint No. 2011-285

v.

Pinelands Regional School District (Ocean)
Custodian of Record

At the January 29, 2013 public meeting, the Government Records Council (“Council”) considered the January 22, 2013 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 because the Custodian failed to comply with the terms of the Council’s Interim Order in a timely manner and informed the Complainant that the records ordered for disclosure will not be disclosed unless and until the Complainant assents to and pays a special service charge of \$250.00, and because the GRC did not have an opportunity to determine whether a special service charge was warranted in this complaint, and if so, the amount of said charge, it is necessary to refer this matter to the Office of Administrative Law to resolve the facts and render an opinion. Specifically, the Administrative Law Judge should determine whether the Custodian (a) complied in a timely manner with the Council’s December 18, 2012 Interim Order, (b) correctly assessed the Complainant a special service charge, and if so, if he properly determined the amount of said charge, and (c) 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 29th Day of January, 2013

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: February 1, 2013



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 29, 2013 Council Meeting**

**Joseph Krrywda¹
Complainant**

GRC Complaint No. 2011-285

v.

**Pinelands Regional School District (Ocean)²
Custodian of Records**

Records Relevant to Complaint: For the superintendent and business administrator, as well as all principals, vice-principals, teachers, supervisors, and athletic directors of the Pinelands Regional School District (“District”) their:

1. Certifications for the 2011-2012 school year assignments
2. Assurance Statement Form G (for teachers)
3. Résumés³

Request Made: August 19, 2011

Response Made: August 22, 2011

Custodian: Stephen Brennan

GRC Complaint Filed: September 3, 2011⁴

Background

December 18, 2012

At the December 18, 2012 public meeting, the Government Records Council (“Council”) considered the December 11, 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. Because Request Item Number 1 and Request Item Number 2 are personnel file records which disclose conformity with specific experiential and/or educational qualifications required for government employment or for receipt of a public pension, said records are subject to disclosure pursuant to N.J.S.A. 47:1A-10. and Bonanno v. Garfield Board of Education Business Department, GRC Complaint No. 2006-62 (June 2008).

¹ No legal representation listed on record.

² Represented by Paul Kalac, Esq., of Kalac & Berger (Iselin, NJ).

³ There were other records requested that are not relevant to this complaint.

⁴ The Complainant signed the Denial of Access Complaint on said date.

2. Because Executive Order No. 26 (McGreevey) provides that the résumés of successful candidates shall be disclosed once the successful candidate is hired, and because the Complainant requested as Request Item Number 3 the résumés of successful candidates, the requested résumés are subject to disclosure pursuant to said Executive Order which is applicable to OPRA through N.J.S.A. 47:1A-9.a.
3. **The Custodian shall comply with items #1 and #2 above by disclosing to the Complainant the records subject to disclosure 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, to the Executive Director.**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.

December 19, 2012

Council's Interim Order distributed to the parties.

December 28, 2012

E-mail from the Complainant to the GRC. The Complainant states that the Custodian failed to disclose the requested records in compliance with the terms of the Council's December 18, 2012 Interim Order.

January 2, 2013

Letter from the Custodian to the Complainant. The Custodian informs the Complainant that he received the Council's December 18, 2012 Interim Order on December 19, 2012, but because the District offices were closed from December 24, 2012 through January 1, 2013, it is now only the third (3rd) business day from the date that he received the Order. The Custodian further informs the Complainant that compliance with the Order will require him to retrieve documents that have been archived, redact personal information, and reproduce records for over two hundred (200) employees, which will total approximately eight hundred (800) pages. The Custodian tells the Complainant that the Complainant will incur a special service charge of \$250.00, which represents \$210.00 for three days of temporary clerical labor at \$70.00 per day and \$40.00 for the copying of eight hundred (800) records at \$0.05 per record. The Custodian recommends to the Complainant that he narrow the scope of his request if he wants to save on special service charges. The Custodian informs the Complainant that the District will not commence work on disclosure of the records until the Complainant (1)

⁵ Satisfactory compliance requires that the Custodian deliver the record(s) 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.

acknowledges in writing his acceptance of the special service charge, (2) indicates whether he will narrow the scope of his request, and (3) forwards to the Custodian one-half of the special service charge amount.

The Custodian informs the Complainant that if the Complainant rejects the special service charge he may institute a proceeding in the Superior Court of New Jersey or file a Denial of Access Complaint with the GRC. The Custodian instructs the Complainant on the procedure to follow in order to file a complaint.

January 2, 2013

E-mail from the Custodian to the GRC. The Custodian states that he noticed that the GRC was copied on an e-mail from the Complainant to the Custodian wherein the Complainant asserted that the Custodian failed to comply in a timely manner with the Council's Interim Order dated December 18, 2012. The Custodian further states that he intends to comply with the Interim Order and asks whether he should reply only to the case manager assigned to Krzywda v. Pinelands Regional School District, GRC Complaint No. 2011-307 or also to the case manager assigned to Krzywda v. Pinelands Regional School District, GRC Complaint No. 2011-285. The Custodian attaches to the e-mail a copy of his letter to the Complainant dated January 2, 2012.

January 2, 2013⁶

E-mail from the GRC to the Custodian. The GRC informs the Custodian that he is already in contempt of the Council's Interim Order for Complaint No. 2011-285 because he has failed to either (a) request an extension of time to comply with the Order, or (b) complied with the Order in a timely manner. The GRC informs the Custodian that if there were extenuating circumstances that prevented him from complying with the terms of the Council's Order in a timely manner, that he should make the GRC Executive Director aware of such circumstances.⁷

Analysis

Whether the Custodian complied with the Council's December 18, 2012 Interim Order?

The Council's Order required the Custodian to disclose to the Complainant the records relevant to the complaint 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, to the Executive Director. The Order further provided that "...[i]f 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." (Emphasis in original.)

⁶ Additional correspondence was submitted by the parties; however, said correspondence restates the facts/assertions already presented to the GRC.

⁷ There is nothing in the evidence of record to indicate that the Custodian contacted the Executive Director to claim extenuating circumstances prevented him from complying in a timely manner with the Council's Interim Order.

The Council delivered its Order to the parties, and the Custodian acknowledged receiving the Order, on December 19, 2012. Thus, the Custodian's response was due by the close of business on December 27, 2012.⁸ However, the Custodian did not communicate in any manner to the Complainant or the GRC until January 2, 2013, when he sent a letter to the Complainant informing him that because the District offices were closed from December 24, 2012 through January 1, 2013, it was only the third (3rd) business day since he had received the Order. The Custodian notified the GRC of his actions by copying the GRC with his letter to the Complainant dated January 2, 2013. Despite the directive in the Council's Order that the Custodian must provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4 to the Executive Director or must certify that the record has been made available to the Complainant pending the Complainant's satisfaction of an assessed financial obligation, the Custodian failed to provide the GRC with any certification in accordance with N.J. Court Rule 1:4-4.

Further, the Custodian notified the Complainant in the letter dated January 2, 2012, that the Complainant would incur a special service charge in the amount of \$250.00 and that a fifty percent (50%) deposit would have to be paid to the Custodian before the District would commence work on disclosure of the requested records. As such, the GRC did not have an opportunity to determine whether a special service charge should be warranted in this complaint, much less whether the total calculated by the Custodian is a fair and reasonable amount.

Accordingly, because the Custodian failed to comply with the terms of the Council's Interim Order in a timely manner and informed the Complainant that the records ordered for disclosure will not be disclosed unless and until the Complainant assents to and pays a special service charge of \$250.00, and because the GRC did not have an opportunity to determine whether a special service charge was warranted in this complaint, and if so, the amount of said charge, it is necessary to refer this matter to the Office of Administrative Law to resolve the facts and render a decision. Specifically, the Administrative Law Judge should determine whether the Custodian (a) complied in a timely manner with the Council's December 18, 2012 Interim Order, (b) correctly assessed the Complainant a special service charge, and if so, if he properly determined the amount of said charge, and (c) knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

⁸ This is the fifth (5th) business day from the Custodian's receipt of the Council's Order, allowing for December 25, 2012, which was a state holiday. The GRC understands that school district personnel may or may not work during the winter break period, which generally spans the week between Christmas and New Year's Day; therefore, if the GRC is notified in a timely manner that the school district will be closed for business throughout that period it will grant an extension of time for compliance with a Council order. In the instant complaint, the Custodian failed to notify the GRC that the District would not be open for business during the winter break. Moreover, the GRC did not learn that the District was closed until the Custodian notified the Complainant that such was the case by letter dated January 2, 2013.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian failed to comply with the terms of the Council's Interim Order in a timely manner and informed the Complainant that the records ordered for disclosure will not be disclosed unless and until the Complainant assents to and pays a special service charge of \$250.00, and because the GRC did not have an opportunity to determine whether a special service charge was warranted in this complaint, and if so, the amount of said charge, it is necessary to refer this matter to the Office of Administrative Law to resolve the facts and render an opinion. Specifically, the Administrative Law Judge should determine whether the Custodian (a) complied in a timely manner with the Council's December 18, 2012 Interim Order, (b) correctly assessed the Complainant a special service charge, and if so, if he properly determined the amount of said charge, and (c) knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By: John E. Stewart, Esq.

Approved By: Karyn Gordon, Esq.
Acting Executive Director

January 22, 2013



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

Joseph Krrywda
Complainant

Complaint No. 2011-285

v.

Pinelands Regional School District (Camden)
Custodian of Record

At the December 18, 2012 public meeting, the Government Records Council ("Council") considered the December 11, 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. Because Request Item Number 1 and Request Item Number 2 are personnel file records which disclose conformity with specific experiential and/or educational qualifications required for government employment or for receipt of a public pension, said records are subject to disclosure pursuant to N.J.S.A. 47:1A-10. and Bonanno v. Garfield Board of Education Business Department, GRC Complaint No. 2006-62 (June 2008).
2. Because Executive Order No. 26 (McGreevey) provides that the résumés of successful candidates shall be disclosed once the successful candidate is hired, and because the Complainant requested as Request Item Number 3 the résumés of successful candidates, the requested résumés are subject to disclosure pursuant to said Executive Order which is applicable to OPRA through N.J.S.A. 47:1A-9.a.
3. **The Custodian shall comply with items #1 and #2 above by disclosing to the Complainant the records subject to disclosure 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(s) 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.

Interim Order Rendered by the
Government Records Council
On The 18th 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**

**Joseph Krrywdá¹
Complainant**

GRC Complaint No. 2011-285

v.

**Pinelands Regional School District (Camden)²
Custodian of Records**

Records Relevant to Complaint: For the superintendent and business administrator, as well as all principals, vice-principals, teachers, supervisors, and athletic directors of the Pinelands Regional School District (“District”) their:

1. Certifications for the 2011-2012 school year assignments
2. Assurance Statement Form G (for teachers)
3. Résumés³

Request Made: August 19, 2011

Response Made: August 22, 2011

Custodian: Stephen Brennan

GRC Complaint Filed: September 3, 2011⁴

Background

August 19, 2011

Complainant’s Open Public Records Act (“OPRA”) request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form. The Complainant states that social security numbers and any personal information may be redacted and that transcripts may be detached from the résumés. The Complainant indicates that the preferred method of delivery is by pick-up at the District office.

August 22, 2011

Custodian’s response to the OPRA request. The Custodian responds in writing via letter to the Complainant’s OPRA request on the first (1st) business day following receipt of such request. The Custodian states that access is denied to the certifications for

¹ No legal representation listed on record.

² Represented by Paul Kalac, Esq., of Kalac & Berger (Iselin, NJ).

³ There were other records requested that are not relevant to this complaint.

⁴ The Complainant signed the Denial of Access Complaint on said date.

employee assignments, Assurance Statement G forms, and résumés because the records are confidential and not subject to OPRA.⁵

September 3, 2011

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

- Complainant’s OPRA request dated August 19, 2011
- Custodian’s response to the OPRA request dated August 22, 2011⁶

The Complainant states that he provided his OPRA request to the Custodian on August 19, 2011, and that on August 22, 2011, the Custodian denied him access to the records relevant to this complaint.

The Complainant does not agree to mediate this complaint.

September 7, 2011

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

September 22, 2011

Custodian’s SOI attaching the Complainant’s OPRA request dated August 19, 2011.

The Custodian certifies that his search for the requested records involved searching current files of the District for existing records responsive to the Complainant’s request. The Custodian also certifies that the Records Retention Schedule established and approved by Records Management Services provides that the records responsive to the Complainant’s request must be retained for seven (7) years after employee termination and that the records may only be destroyed with Records Management Services approval.

The Custodian certifies that he received the Complainant’s OPRA request on August 19, 2011 and responded to said request on August 24, 2011.⁷ The Custodian certifies that in Trenton Times Corp. v. Bd. of Ed. Of Trenton, 138 N.J. Super. 357 (App. Div. 1976), the court relied upon Executive Orders No. 9 and 11 in holding that a school superintendent’s personnel file was not open to inspection. The Custodian certifies that the court determined that Executive Order No. 9 “provided that all personnel records be not deemed public records.” The Custodian also certifies that the court determined that Executive Order No. 11 permitted the disclosure of only the following material from a personnel file: “an individual’s name, title, position, salary, payroll record, length of service in the instrumentality of government and in the government, date of separation

⁵ Other records requested by the Complainant but not relevant to this complaint were made available to him as part of the Custodian’s response.

⁶ The Complainant also attached mailing and tracking information to his complaint; however these materials are not needed by the GRC for adjudication of this complaint.

⁷ The evidence of record reveals that the Custodian responded to the Complainant’s request in writing on August 22, 2011.

from government service and the reason therefore, and the amount and type of pension he is receiving.”⁸

The Custodian certifies that pursuant to the holding in Trenton Times, *supra*, the Complainant is only entitled to the names of teachers and their title and/or position.

September 26, 2011

E-mail from the Custodian to the GRC. The Custodian states that the legal opinion attached as Item 12 of his SOI, although prepared for a different OPRA request, is a valid legal argument for the instant complaint and therefore submitted as such.

October 20, 2011

E-mail from the Complainant to the GRC. The Complainant asserts that he did not receive the Custodian’s SOI.

October 20, 2011

E-mail from the GRC to the Complainant. The GRC forwards to the Complainant a copy of the Custodian’s SOI.

October 25, 2011

The Complainant’s response to the Custodian’s SOI. The Complainant states that the Custodian certified that he was providing a copy of the SOI to the Complainant simultaneously with it being provided to the GRC; however, the Complainant states that the Custodian failed to provide the Complainant with a copy of the SOI. As such, the Complainant asserts that the Custodian committed perjury.

The Complainant further states that Item 12 of the SOI is titled “Krrywda January 31, 2011 Government Records Request.” The Complainant states that the request which formed the basis for the instant complaint was not dated January 31, 2011. The Complainant asserts that the Custodian misled the GRC by submitting a response as Item 12 which was not relevant to this complaint. The Complainant states that the Custodian therefore perpetrated a fraud.

The Complainant asks the GRC to forward the complaint to the Office of Administrative Law for a finding that the Custodian knowingly and willfully violated OPRA. The Complainant also asks the GRC to forward this matter to the New Jersey Attorney General for investigation of alleged perjury and fraud offenses committed by the Custodian.⁹

Analysis

Whether the Custodian unlawfully denied access to the requested records?

⁸ The Custodian is referencing Executive Order No. 9 promulgated under Governor Richard Hughes in 1963 and Executive Order No. 11 promulgated under Governor Brendan Byrne in 1974.

⁹ The Complainant also attached a copy of a letter from the Complainant to the Custodian dated March 1, 2011 with Exhibits A through F; however, said letter predates the date of the Complainant’s OPRA request which formed the basis of the instant complaint and the letter is therefore not relevant to this complaint.

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 also provides that:

“[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; *Executive Order of the Governor*; Rules of Court; any federal law; federal regulation; or federal order.” (Emphasis added.) N.J.S.A. 47:1A-9.a.

Additionally, OPRA provides that:

“ ... the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that an individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of pension received shall be a government record...data contained in information which disclose conformity with specific *experiential, educational or medical qualifications required for government employment or for receipt of a public pension*, but not including any detailed medical or psychological information, *shall be a government record.*” (Emphasis added.) N.J.S.A. 47:1A-10.

Executive Order No. 26 (McGreevey) provides in relevant part:

“No public agency shall disclose the résumés, applications for employment or other information concerning job applicants while a recruitment search is ongoing. *The résumés of successful candidates shall be disclosed once the successful candidate is hired.* The résumés of unsuccessful candidates may be disclosed after the search has been concluded and the position has been filled, but only where the unsuccessful candidate has consented to such disclosure.” (Emphasis added.)

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 instant complaint the evidence of record reveals that the OPRA request was made on August 19, 2011, and the Custodian responded to the request on August 22, 2011, which was the first (1st) business day following receipt of the request. The Custodian refused to disclose any records from the District’s personnel files except for the names of teachers and their title and/or position. In denying the Complainant access to the records relevant to this complaint, the Custodian relied upon the Superior Court’s holding in Trenton Times, *supra*.

Although the Custodian did cite to legal authority in support of his denial of access, he cited to a Superior Court decision which predated OPRA. N.J.S.A. 47:1A-10 largely codifies the personnel file protections provided in Executive Order No. 11 (Byrne); however, the statute goes on to except from the proscribed personnel file information “...data contained in information which disclose conformity with specific *experiential, educational...qualifications required for government employment or for receipt of a public pension.*” ((Emphasis added.) The GRC has determined that records such as diplomas and certificates are subject to disclosure under this provision.

In Bonanno v. Garfield Board of Education Business Department, GRC Complaint No. 2006-62 (June 2008), the Complainant requested personnel information including copies of certificates, diplomas, and transcripts for administrators and teachers. The Custodian denied the requested records, asserting that they were exempt from disclosure under OPRA because they were part of an individual’s personnel file. The GRC determined that because “...teachers and administrators must meet specific requirements for employment in a New Jersey school district, the documents requested by the Complainant... are considered government records pursuant to N.J.S.A. 47:1A-10... and therefore should be releasable to the public with appropriate redactions, if any.”

Here, Request Item Number 1 seeks certifications for named District personnel for the 2011-2012 school year and Request Item Number 2 seeks an Assurance Statement Form G for each of the teachers. Both of these records may be contained in the employees’ personnel files; however, said records will disclose conformity with specific experiential and/or educational qualifications required for government employment. The

certification recognizes the employee's qualification to teach and the Assurance Statement Form G acknowledges that the teacher has satisfied the definition of a Highly Qualified Teacher.¹⁰

Accordingly, because Request Item Number 1 and Request Item Number 2 seek personnel file records which disclose conformity with specific experiential and/or educational qualifications required for government employment or for receipt of a public pension, and because teachers and administrators must meet specific requirements for employment in a New Jersey school district, said records are subject to disclosure pursuant to N.J.S.A. 47:1A-10. and Bonanno, supra.

Request Item Number 3 seeks the résumés for the named District personnel. Again, the Custodian certified that these records were contained in the personnel files of District employees and were therefore exempt from disclosure because the Custodian certified that the Complainant is only entitled to the names of teachers and their title and/or position pursuant to the holding in Trenton Times, supra.

Executive Order No. 26 (McGreevey) provides that the résumés of successful candidates shall be disclosed once the successful candidate is hired. Here, the Complainant requested the résumés of active employees; therefore as active employees the personnel whose résumés the Complainant requested were successful candidates and their résumés were subject to disclosure pursuant to the Executive Order which is applicable to OPRA pursuant to N.J.S.A. 47:1A-9.a., which provides:

“[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to...Executive Order of the Governor. N.J.S.A. 47:1A-9.a.”

Accordingly, because Executive Order No. 26 (McGreevey) provides that the résumés of successful candidates shall be disclosed once the successful candidate is hired, and because the Complainant requested as Request Item Number 3 the résumés of successful candidates, the requested résumés are subject to disclosure pursuant to said Executive Order which is applicable to OPRA through N.J.S.A. 47:1A-9.a.

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.

¹⁰ The federal *No Child Left Behind Act* requires that all teachers be or become highly qualified in the core academic areas they teach. The Assurance Statement Form G is a form prepared by the teacher asserting whether the teacher has satisfied the federal definition of a Highly Qualified Teacher. The current form contains no privacy information requiring redaction; however, older forms may contain the teacher's social security number, which must be redacted before disclosure.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because Request Item Number 1 and Request Item Number 2 are personnel file records which disclose conformity with specific experiential and/or educational qualifications required for government employment or for receipt of a public pension, said records are subject to disclosure pursuant to N.J.S.A. 47:1A-10. and Bonanno v. Garfield Board of Education Business Department, GRC Complaint No. 2006-62 (June 2008).
2. Because Executive Order No. 26 (McGreevey) provides that the résumés of successful candidates shall be disclosed once the successful candidate is hired, and because the Complainant requested as Request Item Number 3 the résumés of successful candidates, the requested résumés are subject to disclosure pursuant to said Executive Order which is applicable to OPRA through N.J.S.A. 47:1A-9.a.
3. **The Custodian shall comply with items #1 and #2 above by disclosing to the Complainant the records subject to disclosure 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 1:4-4,¹¹ to the Executive Director.¹²**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: John E. Stewart, Esq.

Approved By: Karyn Gordon, Esq.
Acting Executive Director

December 11, 2012

¹¹ "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."

¹² Satisfactory compliance requires that the Custodian deliver the record(s) 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.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. GRC 06996-13
AGENCY DKT. NOS. 2011-285
AND 2011-307

JOSEPH KRRYWDA,

Petitioner,

v.

PINELANDS REGIONAL SCHOOL

DISTRICT (OCEAN),

Respondent.

Joseph Krrywda, petitioner, pro se

Paul Kalac, Esq., for respondent (Schwartz, Simon, Edelstein & Celso, LLC,
attorneys)

Record Closed: June 4, 2014

Decided: June 26, 2014

BEFORE **JOSEPH A. ASCIONE**, ALJ:

STATEMENT OF THE CASES

GRC Complaint No. 2011-285

In an Open Public Records Act (OPRA) request, dated August 19, 2011, Joseph Krrywda (Krrywda) sought copies of various 2011 and 2012 employee records of the

Pineland Region School District (Ocean) (Pineland District) (J-9). On December 18, 2012, the Government Records Council (GRC) issued an Interim Order directing the delivery of the requested document Items 1, 2, and 3 of the Denial of Access Complaint (J-5 and J-9). Those items are limited to the 2011-2012 teachers' resumes, certifications and Assurance Statements Form G for their assignments. On January 29, 2013, the GRC unanimously approved the January 22, 2013, Supplemental Findings and Recommendation of the Executive Director (J-1, J-2). The recommendation requested that this office factually find whether the Custodian of Records (COR), complied in a timely manner with the December 18, 2012, Interim Order; correctly assessed the Complainant a special service charge, and if so if he properly determined the amount of said charge; and knowingly and willfully violated the Open Public Records Act (OPRA) and unreasonably denied access under the totality of the circumstances. The records requested were provided to Krrywda at the hearing. He reluctantly accepted them based upon this tribunal's representation that the acceptance would not bear on the determination of this matter.

GRC Complaint No. 2011-307

In an OPRA request, dated February 11, 2011, (Krrywda) sought copies of various 2010 and 2011 employee records of the Pineland District (J-9). On December 18, 2012, the Government Records Council (GRC) issued an Interim Order directing the delivery of requested document Items 1, 2, 3, and 4 of the Denial of Access Complaint (J-7 and J-12). Those items are limited to the 2010-2011 high school teachers' resumes, certifications, and Assurance Statements Form G for their assignments, and all Junior High School Supervisors' certifications for their 2010-11 assignments. On January 29, 2013, the GRC unanimously approved the January 22, 2013, Supplemental Findings and Recommendation of the Executive Director (J-3 and J-4). The recommendation requested that this office factually find whether the COR, complied in a timely manner with the December 18, 2012, Interim Order; correctly assessed the Complainant a special service charge, and if so if he properly determined the amount of said charge; and knowingly and willfully violated the OPRA and unreasonably denied access under the totality of the circumstances. The records requested were provided to

Krrywda at the hearing. He reluctantly accepted them based upon this tribunal's representation that the acceptance would not bear on the determination of this matter.

The December 18, 2012, Interim Order under both complaints resolved the underlying dispute with the COR, and directed the COR to deliver various requested documents. The Interim Order did preserve the right of the COR to charge a special service charge, if appropriate. The COR did not request an extension of time to comply with the Interim Order. The COR responded on January 2, 2013, with a request for a \$250 special service charge for the delivery of the documents. The COR posits that the timeliness of the response is consistent with the Interim Order as the Pinelands District closed from December 24, 2012, to January 1, 2013, so that the fifth business day would be January 4, 2013. Petitioner continued to pursue an intentional violation of the OPRA against the COR. The Pinelands District agreed to waive the \$250 fee as of March 2013, and advised petitioner of the ability to retrieve the requested documents. Petitioner characterized the District's action as an attempt to bribe him to abandon his intentional violation claim and did not retrieve the records. Respondent moved to dismiss the within action on January 31, 2014, three days prior to the initially scheduled hearing date. The hearing date adjourned at the request of petitioner. The motion has not been addressed as untimely under the rules N.J.A.C. 1:1-12.5(a). This Initial Decision effectively disposes of the merits of the motion.

PROCEDURAL HISTORY

The case was transmitted to the Office of Administrative Law (OAL) under the Administrative Procedure Act, N.J.S.A. 52:14B-1 to -15, and the act establishing the OAL, N.J.S.A. 52:14F-1 to -23, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6. On May 8, 2013, the OAL received the transmittal. An initially scheduled hearing in the matter was set for February 3, 2014, and adjourned at the petitioner's request for medical reasons. The undersigned held a hearing on June 4, 2014, and closed the record that date.

TESTIMONY

Stephen J. Brennan (Brennan or COR)

Brennan is an employee of the Pinelands District and serves as the COR. He testified that he responded to the December 18, 2012, Interim Order in a timely fashion on January 2, 2013, as the business days for the Pinelands District did not include the period from December 24, 2012, through January 1, 2013. He testified that the response of January 2, 2013, is the certification required of the Interim Order. He testified that he did not file for an extension of time to comply on December 19, 20, or 21, 2012, as he believed he timely responded to the Interim Order. In the normal course of providing records, he requested \$125 of the anticipated \$250 from petitioner to comply with the record request. Brennan testified that the Pinelands District hired a temporary employee, usually a substitute teacher, to perform the special services. Brennan acknowledged his responsibility as the COR for the production of the records, and did not use a permanent employee to perform the duties. The COR did not obtain timesheets of the individual and other than the January 2, 2013, itemization, he did not prepare an itemized bill.

Joseph Krrywda

Krrywda testified that Brennan did not comply with the December 18, 2012, Interim Order because he did not prepare a certification as required by the Interim Order. Brennan did not request an extension of time. Brennan required a payment before the documents would be provided. Brennan never went back to the GRC to determine the reasonableness of the proposed special service charge. Krrywda testified it is no longer the documents, it is the violation of the Interim Order and a personal penalty should be assessed against Brennan. Krrywda testified that counsel to respondent did not serve the motion to dismiss on him until after the February 3, 2014, hearing date.

DISCUSSION

During the hearing, Krrywda expressed great animosity toward Brennan and counsel for respondent. No motivation or explanation for same came to the attention of the tribunal. Krrywda offered no evidence of any motivation for Brennan's alleged knowing and willful violation of the OPRA. Factually, I do not see a dispute as to what has transpired in the prior proceedings of this matter. Krrywda's animous provides no factual information helpful to this tribunal.

FINDINGS OF FACT

Based upon the testimony Brennan and Krrywda provided, together with the documents the parties submitted and my assessment of their sufficiency, I **FIND** the following as **FACT**:

1. The COR timely responded by its January 2, 2013, correspondence with the December 18, 2012, Interim Order.
2. The COR consistent with the Interim Order provided a special service charge and communicated this charge to petitioner.
3. Petitioner did not pay the special service charge or request to narrow its public record request to reduce those charges.
4. The proposed special service charge of \$250 is composed of photocopying charges of five cents per page and outside substitute teacher charge of three days of work at seventy dollars a day.
5. The three days of work allows the substitute teacher to devote approximately ninety seconds to each document to redact social security and telephone numbers and compile the requested documents. The proposed redacting and compilation charge is .2625 cents per page and is reasonable for the 800 pages of documents requested.

6. The COR and/or Pinelands District in March 2013, determined to waive the special service charge to conclude this matter, and made the records available to petitioner as of March 2013.
7. The Petitioner has not retrieved the records prior to this hearing.
8. No evidence exists that the COR or Pinelands District's actions are a knowing and willful violation of the Open Public Records Act.

CONCLUSIONS OF LAW

OPRA

“Government records shall be readily accessible for inspection, copying or examination by the citizens of this State, with certain exceptions, for the protection of the public interest.” N.J.S.A. 47:1A-1. Procedurally, a custodian must grant access to a government record, or deny a request for access to the government record, as soon as possible, but no later than seven business days after receiving the request, provided the record is readily available and not in storage or archived. N.J.S.A. 47:1A-5(g). The response must also be in writing. See N.J.S.A. 47:1A-5(i). If the custodian fails to respond within those seven days, the failure to respond is deemed a denial of the request. N.J.S.A. 47:1A-5(g). The statute and the Interim Order both use the term “business days”. Administrative notice is taken that school district have periods of time that all administrative offices and the building itself are closed. Such days cannot be considered a business day. Accordingly, the response by the COR on January 2, 2013, is within the permissible time period to respond to the Interim Order.

A person who is denied access may challenge the decision in Superior Court or file a complaint with the GRC. N.J.S.A. 47:1A-6. During the proceeding, the public agency bears the burden of proving that the denial of access is authorized by law. Ibid. Any public official, officer, employee, or custodian who knowingly and willfully violates the act, and is found to have unreasonably denied access under the totality of the

circumstances, shall be subject to civil penalties. N.J.S.A. 47:1A-11. Appropriate disciplinary proceedings may also be initiated against the public official, officer, employee, or custodian against whom the penalty has been imposed. Ibid.

Here the COR requested a special service charge of \$250. The Pinelands District waived that charge by March 2013, and the records were available to the petitioner by that date. The initial request of petitioner was honored to the extent of providing the names of various employees of the Pinelands District. The COR of Pineland District, relying on an opinion of counsel, denied petitioner documents requested that were personnel records and potentially confidential. The GRC evaluated those competing legal claims of employee privacy versus access to records and issued the Interim Order. The waiver of the special service charge does not prevent the analysis of whether the proposed charge was a knowingly and willfully violation of the Open Public Records Act. The charge of \$250 is composed of a \$40 charge for the photocopying of 800 pages at .05 cents per page. The remainder of the charge is \$210 for three days of work to review those 800 pages of 200 employees to redact social security numbers and telephone numbers and copy the redacted pages. This amounts to a .2625-cent charge per page and allows the hired employee approximately ninety seconds to completely redact and photocopy each of those 800 pages. Nothing petitioner presented evidenced that that amount of time or rate of pay is unreasonable under the totality of the circumstances. I **CONCLUDE** that the special service charge is reasonable and was not requested so as to subvert the intent to the OPRA.

In regard to the timeliness of providing the documents, the COR, under the authority of the Interim Order, sought clarification from the petitioner regarding narrowing the scope of his request in light of the proposed cost. Petitioner provided no narrowing of the requested documents. When the COR made the determination to waive the special service charge in an attempt to resolve the matter, the documents were made available to the petitioner promptly. Petitioner did not seek to retrieve the records. Accordingly, I **CONCLUDE** that the records were made available to the petitioner in a timely manner once the COR made the determination to waive the special service charge.

GRC Complaint No. 2011-285

Therefore, I **CONCLUDE** that Brennan did not knowingly and willfully violate OPRA, did not unreasonably deny access to the records under the totality of the circumstances, and is not in violation of the December 18, 2012, Interim Order.

GRC Complaint No. 2011-307

Therefore, I **CONCLUDE** that Brennan did not knowingly and willfully violate OPRA, did not unreasonably deny access to the records under the totality of the circumstances, and is not in violation of the December 18, 2012, Interim Order.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that this case be **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, P.O. 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 26, 2014 _____

DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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APPENDIX

Witnesses

For Petitioner:

Joseph Krrywda

For Respondent:

Stephen J. Brennan

LIST OF EXHIBITS

For Respondent:

- R-1 OPRA Request from Joseph Krrywda, dated 1/31/11
- R-2 Letter from Stephen M. Bacigalupo, II, Esq., Counsel for, Pinelands to Mr. Brennan, MPA, CPA, BA/BS, date 2/7/11
- R-3 Letter from to Mr. Brennan, MPA, CPA, BA/BS to Mr. Krrywda, with attachments responsive to OPRA request, dated 2/10/11
- R-4 Statement of Information for Complaint No. 2011-285 prepared by Stephen J. Brennan, MPA, CPA, Business Administrator/Board Secretary, dated 9/22/11
- R-5 Emails between Mr. Brennan, BA/BS, and Darryl Rhone, GRC Case Manager, dated 12/5/11
- R-6 Statement of Information for Complaint No. 2011-307 prepared by Mr. Brennan, MPA, CPA, BA/BS, dated 12/5/11
- R-7 Finding and Recommendations of the Executive Director for Complaint No. 2011-285, dated 12/18/12
- R-8 Interim Order for Complaint No.2011-285, dated 12/18/12
- R-9 Finding and Recommendations of the Executive Director for Complaint No. 2011-285, dated 12/18/12
- R-10 Interim Order for Complaint No. 2011-307, dated 12/18/12
- R-11 Emails between Mr. Krrywda and Mr. Brennan, BA/BS, dated 12/28/12- 1/2/13

- R-12 Emails between John Stewart, GRC Case Manager, and Mr. Brennan, BA/BS, dated 1/2/13
- R-13 Email from Mr. Brennan to Mr. Kr1ywda, dated 1/24/13, attaching letter to Mr. Krrywda, dated 1/2/13
- R-14 Supplemental Findings and Recommendations of the Executive Director for Complaint No. 2011-285, dated 1/29/13
- R-15 Interim Order for Complaint 2011-285, dated 1/29/13
- R-16 Supplemental Findings and Recommendations of the Executive Director for Complaint No. 2011-307, dated 1/29/13
- R-17 Interim Order for Complaint 2011-307, dated 1/29/13
- R-18 Email from Paul C. Kalac, Esq., Counsel for Pinelands, to Karyn Gordon, Esq., GRC Acting Executive Director, dated 2/22/13
- R-18 Not admitted
- R-19 Not admitted
- R-20 Not admitted

Joint:

- J-1 Interim Order of the Governmental Records Council decided 1/29/13 (2011-285)
- J-2 Supplemental Findings and Recommendations of the Executive Director, dated 1/29/13 (2011-285)
- J-3 Interim Order for the Governmental Records Council decided, dated 1/29/13 (2011-307)
- J-4 Supplemental Findings and Recommendations of the Executive Director, dated 1/29/13 (2011-307)
- J-5 Interim of the Governmental Records Council, decided 12/18/12 (2011-285)
- J-6 Finding and Recommendations of the Executive Director, dated 12/18/12 (2011-285)
- J-7 Interim Order of the Governmental Records Council, decided 12/18/12 (2011-307)
- J-8 Finding and Recommendations of the Executive Director, dated 12/18/12 (2011-285)

- J-9 Denial of Access Complaint, dated 9/3/11 (2011-285)
- J-10 Custodian's Statement of Information, dated 9/22/11 (2011-285)
- J-11 Complaint's Reply, dated 10/25/11 (2011-285)
- J-13 Custodian's Statement of Information, dated 12/5/11 (2011-307)