



**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**

**September 30, 2014 Government Records Council Meeting**

Marc E. Chiappini  
Complainant

Complaint No. 2013-139

v.

Township of Fairfield (Cumberland)  
Custodian of Record

At the September 30, 2014 public meeting, the Government Records Council (“Council”) considered the September 23, 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:

1. The Custodian complied with the Council’s July 29, 2014 Interim Order because she responded within the prescribed period providing records, and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the records identified in the Council’s July 29, 2014 Interim Order, and failed to comply with the Council’s November 19, 2013 Interim Order. However, the Custodian produced the identified records to the Complainant in compliance with the Council’s July 29, 2014 Interim Order. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 September, 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: October 3, 2014**

STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL

Supplemental Findings and Recommendations of the Executive Director  
September 30, 2014 Council Meeting

Marc E. Chiappini<sup>1</sup>  
Complainant

GRC Complaint No. 2013-139

v.

Township of Fairfield (Cumberland)<sup>2</sup>  
Custodial Agency

**Records Relevant to Complaint:** “Executive Session recordings of any and all discussions concerning training classes for Sharon Chiappini for December, January, and February. Dates for December 2012 inclusive of all Twp. Committee meetings. Dates for January and February 2013 inclusive of all Twp. Committee meetings.”

**Custodian of Record:** Carla Smith  
**Request Received by Custodian:** April 2, 2013  
**Response Made by Custodian:** May 15, 2013  
**GRC Complaint Received:** May 16, 2013

**Background**

July 29, 2014 Council Meeting:

At its July 29, 2014 public meeting, the Government Records Council (“Council”) considered the July 22, 2014 *In Camera* Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian failed to comply with the Council’s November 19, 2013 Interim Order because she did not provide certified confirmation of compliance to the Executive Director in accordance with N.J. Court Rule 1:4-4, and submit nine (9) copies of the requested records for an *in camera* review within the allotted five (5) business days to comply.
  
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, R. 1:4-4,<sup>3</sup> to the**

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

<sup>2</sup> Represented by George Saponaro, Esq. (Mount Holly, NJ).

<sup>3</sup> “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.”

## **Executive Director.** <sup>4</sup>

3. 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 Custodians' compliance with the Council's Interim Order.

### Procedural History:

On July 30, 2014, the Council distributed its Interim Order to all parties. On August 6, 2014, the Custodian responded to the Council's Interim Order. The Custodian certified that she produced the requested records to the Complainant pursuant to the Council's Interim Order.

### Analysis

#### Compliance

At its July 29, 2014 meeting, the Council ordered the Custodian to provide the Complainant with those portions of the requested records not exempt from disclosure. The Counsel further required the Custodian to submit certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director. On July 30, 2014, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on August 6, 2014.

On August 6, 2014, the fifth (5<sup>th</sup>) business day after receipt of the Council's Order, the Custodian submitted certified confirmation of compliance to the GRC, via email.

Therefore, the Custodian complied with the Council's July 29, 2014 Interim Order because she responded within the prescribed period providing records, and simultaneously provided certified confirmation of compliance to the Executive Director.

#### Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states "[i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the

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<sup>4</sup> 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.

Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

The Custodian unlawfully denied access to the records identified in the Council's July 29, 2014 Interim Order, and failed to comply with the Council's November 19, 2013 Interim Order. However, the Custodian produced the identified records to the Complainant in compliance with the Council's July 29, 2014 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's July 29, 2014 Interim Order because she responded within the prescribed period providing records, and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the records identified in the Council's July 29, 2014 Interim Order, and failed to comply with the Council's November 19, 2013 Interim Order. However, the Custodian produced the identified records to the Complainant in compliance with the Council's July 29, 2014 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado, Esq.  
Staff Attorney

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

September 23, 2014



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

INTERIM ORDER

July 29, 2014 Government Records Council Meeting

Marc E. Chiappini  
Complainant

Complaint No. 2013-139

v.

Township of Fairfield (Cumberland)  
Custodian of Record

At the July 29, 2014 public meeting, the Government Records Council (“Council”) considered the July 22, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian failed to comply with the Council’s November 19, 2013 Interim Order because she did not provide certified confirmation of compliance to the Executive Director in accordance with N.J. Court Rule 1:4-4, and submit nine (9) copies of the requested records for an *in camera* review within the allotted five (5) business days to comply.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.<sup>1</sup>**
3. 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 Custodians’ compliance with the Council’s Interim Order.

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<sup>1</sup> Satisfactory compliance requires that the Custodian deliver the records 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.

Interim Order Rendered by the  
Government Records Council  
On The 29<sup>th</sup> 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 30, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Marc E. Chiappini<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-139**

v.

**Township of Fairfield (Cumberland)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** “Executive Session recordings of any and all discussions concerning training classes for Sharon Chiappini for December, January, and February. Dates for December 2012 inclusive of all Twp. Committee meetings. Dates for January and February 2013 inclusive of all Twp. Committee meetings.”

**Custodian of Record:** Carla Smith

**Request Received by Custodian:** April 2, 2013

**Response Made by Custodian:** May 15, 2013

**GRC Complaint Received:** May 16, 2013

**Records Submitted for *In Camera* Examination:** Township Council’s executive session minutes for the months of December 2012, January 2013, and February 2013.

**Background**

**November 19, 2013 Council Meeting:**

At its November 19, 2013 public meeting, the Council considered the November 12, 2013 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. Pursuant to Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the requested record (Township Council’s executive session minutes for the months of December 2012, January 2013, and February 2013) to determine the validity of the Custodian’s assertion that the record constitutes attorney-client privilege, discussions of personnel matters, and/or information generated by or on behalf of a public employer/employee in connection with a grievance filing, which are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-9(a), N.J.S.A. 10:4-12, and N.J.S.A. 47:1A-10.

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

<sup>2</sup> Represented by George Saponaro, Esq. (Mount Holly, NJ).

2. **The Custodian must deliver<sup>3</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records, a document or redaction index<sup>4</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>5</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. 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 outcome of the Council's *in camera* review.

#### Procedural History:

On May 1, 2014, the Council distributed its Interim Order to all parties. On May 5, 2014, the Custodian responded to the Council's Interim Order, submitting nine (9) copies of the Yearly Assessment Report per the Council's Order.

#### Analysis

##### Compliance

At its November 19, 2013 meeting, the Council ordered the Custodian to submit nine (9) copies of the Township of Fairfield's executive session minutes for the months of December 2012, January 2013, and February 2013 for *in camera* review. The Council further required the Custodian to provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On November 20, 2013, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on Wednesday, November 27, 2013.

On December 2, 2013, the seventh (7<sup>th</sup>) business day after receipt of the Council's Order, the Custodian submitted certified confirmation of compliance to the GRC, via regular mail, and nine (9) copies of the requested records in audio format therein. The Complainant did not request an extension of time to respond.

Therefore, the Custodian failed to comply with the Council's November 19, 2013 Interim Order because she did not provide certified confirmation of compliance to the Executive Director in accordance with N.J. Court Rule 1:4-4, and submit nine (9) copies of the requested records for an *in camera* review within the allotted five (5) business days.

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<sup>3</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>4</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>5</sup> "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."

## **Unlawful Denial of Access**

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. N.J.S.A. 47:1A-6.

### *Sua Sponte Review*

The Council is permitted to raise additional defenses regarding the disclosure of records pursuant to Paff v. Twp. of Plainsboro, Docket No. A-2122-05T2 (App. Div. 2007), *certif. denied* by Paff v. Twp. of Plainsboro, 193 N.J. 292 (2007).<sup>6</sup> In Paff, the complainant challenged the GRC’s authority to uphold a denial of access for reasons never raised by the custodian. Specifically, the Council did not uphold the basis for the redactions cited by the custodian. The Council, on its own initiative, determined that the Open Public Meetings Act prohibited the disclosure of the redacted portions to the requested executive session minutes. The Council affirmed the custodian’s denial to portions of the executive session minutes but for reasons other than those cited by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian’s cited basis for denial was lawful. The court held that:

[t]he GRC has an independent obligation to ‘render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to’ OPRA...The GRC is not limited to assessing the correctness of the reasons given for the custodian’s initial determination; it is charged with determining if the initial decision was correct.

### Id.

The court further stated that:

[a]side from the clear statutory mandate to decide if OPRA requires disclosure, the authority of a reviewing agency to affirm on reasons not advanced by the reviewed agency is well established. Cf. Bryant v. City of Atl. City, 309 N.J. Super. 596, 629-30 (App. Div. 1998) (citing Isko v. Planning Bd. Of Livingston, 51 N.J. 162, 175 (1968) (lower court decision may be affirmed for reasons other than those given below)); Dwyer v. Erie Inv. Co., 138 N.J. Super. 93, 98 (App. Div. 1975) (judgments must be affirmed even if lower court gives wrong reason), *certif. denied*, 70 N.J. 142 (1976); Bauer v. 141-149 Cedar Lane Holding Co., 42 N.J. Super. 110, 121 (App. Div. 1956) (question for reviewing court is propriety of action reviewed, not the reason for the action), *aff’d*, 24 N.J. 139 (1957).

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<sup>6</sup> On appeal from Paff v. Twp. of Plainsboro, GRC Complaint No. 2005-29 (March 2006). [unpublished]  
Marc E. Chiappini v. Township of Fairfield (Cumberland), 2013-139 – *In Camera* Findings and Recommendations of the Executive Director

Id.

The Custodian, in support of her denial of access to the records, cites N.J.S.A. 47:1A-1.1 (a government record shall not include any records within the attorney-client privilege), and implicitly references N.J.S.A. 47:1A-10 (personnel, pension records, and grievances shall not be considered a public record) without citation. Additionally, the Custodian cites N.J.S.A. 47:1A-9(a) (exemptions from public access are not limited to those enumerated under OPRA) and N.J.S.A. 10:4-12, but does not cite specific subparts. Rather, the Custodian states that N.J.S.A. 10:4-12 “allows governing bodies to exclude the public from discussions of personnel matters.” The Custodian raises no other defenses to nondisclosure.

#### New Jersey Open Public Meetings Act

OPRA’s provisions shall not abrogate any exemption of a government record from public access made pursuant to any other statute. N.J.S.A. 47:1A-9(a). The New Jersey Open Public Meeting’s Act contains nine (9) exemptions in which a public body may exclude the public from access to a meeting. N.J.S.A. 10:4-12. Specifically, N.J.S.A. 10:4-12(b)(4) exempts discussions relating to collective bargaining agreements and negotiations. N.J.S.A. 10:4-12(b)(7) exempts discussions of pending or anticipated litigation or contract negotiations, or matters falling under attorney-client privilege. Finally, N.J.S.A. 10:4-12(b)(8) exempts discussions involving the employment, including terms and conditions, evaluation of performance, discipline, termination, etc.

#### Attorney-Client Privilege

Additionally, OPRA exempts access to “. . . any record within the attorney-client privilege.” N.J.S.A. 47:1A-1.1. Further, “[t]he provisions of [OPRA] shall not abrogate or erode any . . . grant of confidentiality . . . recognized by . . . court rule.” N.J.S.A. 47:1A-9(b). As such, OPRA does not allow for the disclosure of attorney work product, consisting of “the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.” Rule 4:10-2(c).

In the context of public entities, these privileges extend to communications between the public body, the attorney retained to represent it, necessary intermediaries and agents through whom communications are conveyed, and co-litigants who have employed a lawyer to act for them in a common interest. See Tractenberg v. Twp. of W. Orange, 416 N.J. Super. 354, 376 (App. Div. 2010); In re Env’tl. Ins. Declaratory Judgment Actions, 259 N.J. Super. 308, 313 (App. Div. 1992). At the same time, the attorney-client and work product privileges do not apply to automatically and completely insulate attorney correspondence from disclosure. See Hunterdon Cnty. P.B.A. Local 188 v. Twp. of Franklin, 286 N.J. Super. 389, 394; In the Matter of Grand Jury Subpoenas, 241 N.J. Super. 18, 30 (App. Div. 1989).

#### Advisory, Consultative, or Deliberative Material

Finally, OPRA provides that the definition of a government record “. . . shall not include . . . inter-agency or intra-agency advisory, consultative, or deliberative [“(ACD”)”] material.”

When this exception is invoked, a governmental entity may “withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated.” Educ. Law Center v. N.J. Dep’t of Educ., 198 N.J. 274, 285 (2009) (citing NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975)). The custodian claiming an exception to the disclosure requirements under OPRA on this basis must initially satisfy two conditions: (1) the document must be pre-decisional, meaning that the document was generated prior to the adoption of the governmental entity's policy or decision; and (2) the document must reflect the deliberative process, which means that it must contain opinions, recommendations, or advice about agency policies. Id. at 286 (internal citations and quotations omitted).

The key factor in this determination is whether the contents of the document reflect “formulation or exercise of . . . policy-oriented judgment or the process by which policy is formulated.” Id. at 295 (adopting the federal standard for determining whether material is “deliberative” and quoting Mapother v. Dep’t of Justice, 3 F.3d 1533, 1539 (D.C. Cir. 1993)). Once the governmental entity satisfies these two threshold requirements, a presumption of confidentiality is established, which the requester may rebut by showing that the need for the materials overrides the government's interest in confidentiality. Id. at 286-87.

The GRC conducted an *in camera* examination of the submitted records. The results of the examination are set forth in the following table:

<b>Record No.</b>	<b>Record Name/Date  Timestamp (hh:mm:ss)</b>	<b>Description of Record or Redaction</b>	<b>Custodian’s Explanation/ Citation for Non-disclosure or Redactions</b>	<b>Findings of the In Camera Examination</b>
1.	December 11, 2012 executive session minutes  00:00:00 – 00:01:38	Discussion of liability issues regarding dog bite incident.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . Thus, the

				Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6.</u>
	December 11, 2012 executive session minutes  00:01:39 – 00:04:59	Insurance ramifications related to dog bite incident.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . <b>The Custodian must disclose the record.</b>
	December 11, 2013 executive session minutes  00:05:00 – 00:05:30	Discussion of defense to litigation regarding the dog bite incident.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . Thus, the Custodian lawfully denied access to the

				attachment. <u>N.J.S.A. 47:1A-6.</u>
	December 11, 2012 executive session minutes  00:05:31 – 00:05:47	Continued discussion of insurance ramifications of dog bite incident.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . <b>The Custodian must disclose the record.</b>
	December 11, 2012 executive session minutes  00:05:48 – 00:06:37	Discussion on revising ordinances related to rabies vaccinations and dog licensing.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . However, the record includes pre-decisional recommendations and opinions that are ACD

				in nature. Thus, the Custodian lawfully denied access to the record. <u>N.J.S.A. 47:1A-6</u> .
	December 11, 2012 executive session minutes  00:06:38 – 00:08:44	Discussion on the method of conducting a public opinion survey related to modifying ordinances on rabies vaccination/dog licensing.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . However, the record includes pre-decisional recommendations and opinions that are ACD in nature. Thus, the Custodian lawfully denied access to the record. <u>N.J.S.A. 47:1A-6</u> .
	December 11, 2012 executive session minutes  00:08:45 – 00:15:09	Various litigation matters and outstanding legal bills against the Township.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . However, the record is exempt because it contains attorney-client and work product

				privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6</u> .
	December 11, 2012 executive session minutes  00:15:10 – 00:16:21	Summary of fines and liabilities outstanding against the Township.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . <b>The Custodian must disclose the record.</b>
	December 11, 2012 executive session minutes  00:16:22 – 00:16:51	Discussion on collective bargaining agreement and upcoming negotiations.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it

				<p>does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1.</u> However, the record is exempt because it contains discussions relating to collective bargaining agreements and negotiations. <u>N.J.S.A. 41:1A-9;</u> <u>N.J.S.A. 10:4-12(b)(4).</u></p>
	<p>December 11, 2012 executive session minutes</p> <p>00:16:52 – 00:18:12</p>	<p>Closing comment on dog bite incident and motion to end executive session.</p>	<p>Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1;</u> discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10;</u> discussions of personnel matters; <u>N.J.S.A. 47:1A-9,</u> <u>N.J.S.A. 10:4-12(b)(8).</u></p>	<p>The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9;</u> <u>N.J.S.A. 10:4-12(b)(8).</u> The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10.</u> Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1.</u>  <b>The Custodian must disclose the record.</b></p>
2.	<p>January 8, 2013 executive session minutes</p> <p>00:00:00 – 00:01:18</p>	<p>Resolution to adjourn into enter into executive session.</p>	<p>Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1;</u> discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10;</u> discussions of personnel matters; <u>N.J.S.A. 47:1A-9,</u> <u>N.J.S.A. 10:4-12(b)(8).</u></p>	<p>The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9;</u> <u>N.J.S.A. 10:4-12(b)(8).</u> The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10.</u> Further, the record does not contain attorney-client privileged information.</p>

				<p>The information is general enough that it does not reveal any legal advice, strategy, or work product.  <u>N.J.S.A. 47:1A-1.1.</u>  <b>The Custodian must disclose the record.</b></p>
	<p>January 8, 2013 executive session minutes</p> <p>00:01:19 – 00:02:34</p>	<p>Question of whether there are personnel/pending litigation matters on the agenda.</p>	<p>Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u>; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u>; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u>, <u>N.J.S.A. 10:4-12(b)(8)</u>.</p>	<p>The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u>; <u>N.J.S.A. 10:4-12(b)(8)</u>. The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u>. Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product.  <u>N.J.S.A. 47:1A-1.1.</u>  <b>The Custodian must disclose the record.</b></p>
	<p>January 8, 2013 executive session minutes</p> <p>00:02:35 – 00:07:50</p>	<p>Personnel discussion relating to Construction Planning and Zoning Board secretary.</p>	<p>Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u>; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u>; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u>, <u>N.J.S.A. 10:4-12(b)(8)</u>.</p>	<p>The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u>. Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product.  <u>N.J.S.A. 47:1A-1.1.</u>  However, the record is exempt because it</p>

				contains discussions of personnel matters. <u>N.J.S.A. 41:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> .
	January 8, 2013 executive session minutes  00:07:51 – 00:09:54	Personnel discussion on former administrator under investigation by the New Jersey State Police and restitution payments.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . Further, The record is exempt because it contains discussions of personnel matters. <u>N.J.S.A. 41:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6</u> .
	January 8, 2013 executive session minutes  00:09:55 – 00:11:16	Personnel discussion on former employee threatening to sue Township.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . Further, The record is exempt because it contains

				discussions of personnel matters. <u>N.J.S.A. 41:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6</u> .
	January 8, 2013 executive session minutes  00:11:17 – 00:15:39	Discussion on collective bargaining negotiations.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . However, the record is exempt because it contains discussions relating to collective bargaining agreements and negotiations. <u>N.J.S.A. 41:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(4)</u> .
	January 8, 2013 executive session minutes  00:15:40 – 00:19:13	Question on incomplete public meeting minutes and employee in charge of recording said minutes.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> ,	The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it

			<u>N.J.S.A. 10:4-12(b)(8).</u>	does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1.</u> However, the record is exempt because it contains discussions of personnel matters. <u>N.J.S.A. 41:1A-9;</u> <u>N.J.S.A. 10:4-12(b)(8).</u>
	January 8, 2013 executive session minutes  00:19:14 – 00:19:49	Motion to end executive session.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1;</u> discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10;</u> discussions of personnel matters; <u>N.J.S.A. 47:1A-9,</u> <u>N.J.S.A. 10:4-12(b)(8).</u>	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9;</u> <u>N.J.S.A. 10:4-12(b)(8).</u> The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10.</u> Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1.</u> <b>The Custodian must disclose the record.</b>
3.	January 15, 2013 executive session minutes  00:00:00 – 00:12:52	Discussion on administrative ruling against the Township over improperly enacted ordinance.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1;</u> discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10;</u> discussions of personnel matters; <u>N.J.S.A. 47:1A-9,</u> <u>N.J.S.A. 10:4-12(b)(8).</u>	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9;</u> <u>N.J.S.A. 10:4-12(b)(8).</u> The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10.</u> However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which

				would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6</u> .
	January 15, 2013 executive session minutes  00:12:53 – 00:22:06	Discussion of collective bargaining negotiations and strategy.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . However, the record is exempt because it contains discussions relating to collective bargaining agreements and negotiations. <u>N.J.S.A. 41:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(4)</u> .
	January 15, 2013 executive session minutes  00:22:07 – 00:27:42	Return to discussion on administrative ruling on improperly enacted ordinance.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> ,	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . However, the record is exempt because it

			<u>N.J.S.A. 10:4-12(b)(8).</u>	contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1.</u> Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6.</u>
	January 15, 2013 executive session minutes  00:27:43 – 00:28:15	Discussion on “Hoffman” litigation.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8).</u>	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8).</u> The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10.</u> However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1.</u> Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6.</u>
	January 15, 2013 executive session minutes  00:28:16 – 00:29:06	Discussion on certain contract bids.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> ,	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8).</u> The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10.</u> Further, the record does not contain

			<u>N.J.S.A. 10:4-12(b)(8).</u>	attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1.</u> However, the record is exempt because it contains discussions relating to collective bargaining agreements and negotiations. <u>N.J.S.A. 41:1A-9;</u> <u>N.J.S.A. 10:4-12(b)(4).</u>
	January 15, 2013 executive session minutes  00:29:07 – 00:29:46	Additional discussion on “Hoffman” litigation.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1;</u> discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10;</u> discussions of personnel matters; <u>N.J.S.A. 47:1A-9,</u> <u>N.J.S.A. 10:4-12(b)(8).</u>	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9;</u> <u>N.J.S.A. 10:4-12(b)(8).</u> The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10.</u> However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1.</u> Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6.</u>
	January 15, 2013 executive session minutes  00:29:44 – 00:31:18	Commentary on Committee Meeting procedures	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1;</u> discussions in connection with a grievance filing,	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9;</u> <u>N.J.S.A. 10:4-12(b)(8).</u> The record does not contain discussions pertaining

			<u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6</u> .
January 15, 2013 executive session minutes  00:31:19 – 00:32:51	Question on whether there is any new litigation pending against the Township.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . <b>The Custodian must disclose the record.</b>	
January 15, 2013 executive session minutes  00:32:52 – 00:34:10	Question on whether any Township committee member has more authority over the other regarding communication	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> .	

		and directives with the Township solicitor.	personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . <b>The Custodian must disclose the record.</b>
	January 15, 2013 executive session minutes  00:34:11 – 00:37:47	Back and forth discussion between Township solicitor and committee member.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . <b>The Custodian must disclose the record.</b>
	January 15, 2013 executive session minutes  00:37:48 – 00:38:41	Motion to conclude executive discussion.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information.

				The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1.</u> <b>The Custodian must disclose the record.</b>
4.	February 12, 2013 executive session minutes  00:00:00 – 00:01:47	Entrance into executive session.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1.</u> <b>The Custodian must disclose the record.</b>
	February 12, 2013 executive session minutes  00:01:48 – 00:12:44	Personnel matter pertaining to the Construction Planning and Zoning Board secretary.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . Further, The record is exempt because it contains

				discussions of personnel matters. <u>N.J.S.A.</u> 41:1A-9; <u>N.J.S.A.</u> 10:4-12(b)(8). Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A.</u> 47:1A-6.
	February 12, 2013 executive session minutes  00:12:45 – 00:13:35	Discussion on “Breyer” litigation matter.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A.</u> 47:1A-1.1; discussions in connection with a grievance filing, <u>N.J.S.A.</u> 47:1A-10; discussions of personnel matters; <u>N.J.S.A.</u> 47:1A-9, <u>N.J.S.A.</u> 10:4-12(b)(8).	The record does not contain personnel discussions. <u>N.J.S.A.</u> 47:1A-9; <u>N.J.S.A.</u> 10:4-12(b)(8). The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A.</u> 47:1A-10. However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A.</u> 47:1A-1.1. Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A.</u> 47:1A-6.
4.	February 12, 2013 executive session minutes  00:13:36 – 00:14:04	“Planner” Contractual issue.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A.</u> 47:1A-1.1; discussions in connection with a grievance filing, <u>N.J.S.A.</u> 47:1A-10; discussions of personnel matters; <u>N.J.S.A.</u> 47:1A-9, <u>N.J.S.A.</u> 10:4-12(b)(8).	The record does not contain personnel discussions. <u>N.J.S.A.</u> 47:1A-9; <u>N.J.S.A.</u> 10:4-12(b)(8). The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A.</u> 47:1A-10. However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which

				would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6</u> .
	February 12, 2013 executive session minutes  00:14:05 – 00:17:07	Discussion on tax appeals process and preparations; discussion on specific tax appeal litigation.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6</u> .
	February 12, 2013 executive session minutes  00:17:08 – 00:21:10	Collective bargaining negotiations, planning, and strategy.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it

				<p>does not reveal any legal advice, strategy, or work product.  <u>N.J.S.A. 47:1A-1.1.</u>  However, the record is exempt because it contains discussions relating to collective bargaining agreements and negotiations.  <u>N.J.S.A. 41:1A-9;</u>  <u>N.J.S.A. 10:4-12(b)(4).</u></p>
	<p>February 12, 2013 executive session minutes</p> <p>00:21:11 – 00:21:37</p>	<p>Discussion on proper attire during Township committee meetings.</p>	<p>Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u>; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u>; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u>, <u>N.J.S.A. 10:4-12(b)(8)</u>.</p>	<p>The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u>; <u>N.J.S.A. 10:4-12(b)(8)</u>. The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u>. Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product.  <u>N.J.S.A. 47:1A-1.1.</u>  <b>The Custodian must disclose the record.</b></p>
	<p>February 12, 2013 executive session minutes</p> <p>00:21:38 – 00:23:54</p>	<p>Discussion on draft resolution pertaining to Construction Planning and Zoning Board Secretary.</p>	<p>Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u>; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u>; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u>, <u>N.J.S.A. 10:4-12(b)(8)</u>.</p>	<p>The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u>. However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or</p>

				work product. <u>N.J.S.A. 47:1A-1.1</u> . Further, The record is exempt because it contains discussions of personnel matters. <u>N.J.S.A. 41:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6</u> .
5.	February 19, 2013 executive session minutes  00:00:00 – 00:01:19	Entrance into executive session.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . <b>The Custodian must disclose the record.</b>
	February 19, 2013 executive session minutes  00:01:20 – 00:54:54	Discussion between Township Committee and tax appeal litigants, Mr. Brooks.  (Public?)	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . However, the record is exempt because it contains attorney-client and work product

				<p>privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u>. Further, The record is exempt because it contains discussions relating to pending or anticipated litigation. <u>N.J.S.A. 41:1A-9</u>; <u>N.J.S.A. 10:4-12(b)(7)</u>. Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6</u>.</p>
	<p>February 19, 2013 executive session minutes</p> <p>00:54:55 – 01:31:10</p>	<p>Discussion amongst Township Committee regarding Brooks issue.</p>	<p>Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u>; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u>; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u>, <u>N.J.S.A. 10:4-12(b)(8)</u>.</p>	<p>The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u>; <u>N.J.S.A. 10:4-12(b)(8)</u>. The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u>. However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u>. Further, The record is exempt because it contains discussions relating to pending or anticipated litigation. <u>N.J.S.A. 41:1A-9</u>; <u>N.J.S.A. 10:4-12(b)(7)</u>. Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A.</u></p>

				47:1A-6.
February 19, 2013 executive session minutes  01:31:11 – 01:32:45	Collective Bargaining negotiations, planning and strategy.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . However, the record is exempt because it contains discussions relating to collective bargaining agreements and negotiations. <u>N.J.S.A. 41:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(4)</u> .	
February 19, 2013 executive session minutes  01:32:46 – 01:33:18	Status update on Weiner personnel matter.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . However, the record is exempt because it	

				contains discussions of personnel matters. <u>N.J.S.A. 41:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> .
	February 19, 2013 executive session minutes  01:33:19 – 01:33:43	Notice of a grievance filed by employee against the Township.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . However, the record contains matters related to an employee grievance filing. <u>N.J.S.A. 47:1A-10</u> . Thus the Custodian lawfully denied access to the record. <b>The Custodian must disclose the record.</b>
	February 19, 2013 executive session minutes  01:33:44 – 01:35:01	Notice to the Township on a certain contract and that breaches may have occurred.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . However, the record is exempt because it contains attorney-client and work product privileged material, the disclosure of which would reveal legal advice, strategy, or work product. <u>N.J.S.A.</u>

				47:1A-1.1. Thus, the Custodian lawfully denied access to the attachment. <u>N.J.S.A. 47:1A-6.</u>
February 19, 2013 executive session minutes  01:35:02 – 01:38:04	Collective Bargaining negotiations, planning, strategy.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is general enough that it does not reveal any legal advice, strategy, or work product. <u>N.J.S.A. 47:1A-1.1</u> . However, the record is exempt because it contains discussions relating to collective bargaining agreements and negotiations. <u>N.J.S.A. 41:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(4)</u> .	
February 19, 2013 executive session minutes  01:38:05 – 01:38:18	Motion to end executive session.	Denied in its entirety: Attorney-client privilege, <u>N.J.S.A. 47:1A-1.1</u> ; discussions in connection with a grievance filing, <u>N.J.S.A. 47:1A-10</u> ; discussions of personnel matters; <u>N.J.S.A. 47:1A-9</u> , <u>N.J.S.A. 10:4-12(b)(8)</u> .	The record does not contain personnel discussions. <u>N.J.S.A. 47:1A-9</u> ; <u>N.J.S.A. 10:4-12(b)(8)</u> . The record does not contain discussions pertaining to a grievance filing. <u>N.J.S.A. 47:1A-10</u> . Further, the record does not contain attorney-client privileged information. The information is	

				<p>general enough that it does not reveal any legal advice, strategy, or work product.  <u>N.J.S.A. 47:1A-1.1.</u>  <b>The Custodian must disclose the record.</b></p>
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**Knowing & Willful**

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 Custodians’ compliance with the Council’s Interim Order.

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council’s November 19, 2013 Interim Order because she did not provide certified confirmation of compliance to the Executive Director in accordance with N.J. Court Rule 1:4-4, and submit nine (9) copies of the requested records for an *in camera* review within the allotted five (5) business days to comply.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.<sup>7</sup>**
3. 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 Custodians’ compliance with the Council’s Interim Order.

Prepared By: Samuel A. Rosado, Esq.  
 Staff Attorney

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

July 22, 2014

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<sup>7</sup> Satisfactory compliance requires that the Custodian deliver the records 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  
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

November 19, 2013 Government Records Council Meeting

Marc E. Chiappini  
Complainant

Complaint No. 2013-139

v.

Township of Fairfield (Cumberland)  
Custodian of Record

At the November 19, 2013 public meeting, the Government Records Council ("Council") considered the November 12, 2013 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. Pursuant to Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the requested record (Township Council's executive session minutes for the months of December 2012, January 2013, and February 2013) to determine the validity of the Custodian's assertion that the record constitutes attorney-client privilege, discussions of personnel matters, and/or information generated by or on behalf of a public employer/employee in connection with a grievance filing, which are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.S.A. 10:4-12, N.J.S.A. 47:1A-10.
2. **The Custodian must deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records, a document or redaction index<sup>2</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>3</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. 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 outcome of the Council's *in camera* review.

<sup>1</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>2</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>3</sup> "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."

Interim Order Rendered by the  
Government Records Council  
On The 19<sup>th</sup> Day of November, 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: November 20, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 19, 2013 Council Meeting**

**Marc E. Chiappini<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-139**

v.

**Township of Fairfield (Cumberland)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Executive Session recordings of any and all discussions concerning training classes for Sharon Chiappini for December, January, and February. Dates for December 2012 inclusive of all Twp. Committee meetings. Dates for January and February 2013 inclusive of all Twp. Committee meetings.

**Custodian of Record:** Carla Smith  
**Request Received by Custodian:** April 2, 2013  
**Response Made by Custodian:** May 15, 2013  
**GRC Complaint Received:** May 16, 2013

**Background<sup>3</sup>**

**Request and Response:**

On April 2, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.

On May 13, 2013, the Complainant sent a letter informing the Custodian that the OPRA request response is overdue and that she should provide the requested records by May 15, 2013. On May 15, 2013, the Complainant received a letter from the Administrator for the Township of Fairfield (“Township”), dated May 10, 2013, stating that the Custodian is awaiting legal advice from Counsel prior to responding to the Complainant. On May 15, 2013, the Custodian responded in writing denying the Complainant access to the records on the grounds that the responsive records contain information related to an ongoing investigation and potential litigation.

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

<sup>2</sup> Represented by George Saponaro, Esq. (Mount Holly, NJ).

<sup>3</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

### Denial of Access Complaint:

On May 16, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant does not respond to or challenge the Custodian’s basis for denial.

### Statement of Information:

On June 19, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s OPRA request on April 2, 2013. The Custodian then certifies that on or about that date, she verbally informed the Complainant’s spouse, a Township employee, that the Custodian would need an extension of time in order to fulfill the Complainant’s request. The Custodian does not give a specific date when she would respond to the Complainant’s request.

In a letter dated May 15, 2013, the Custodian responded to the Complainant in writing stating that after review of the responsive records by Counsel, the Complainant’s request is denied due to there being “an ongoing investigation” and “potential litigation.”

In addition, the Custodian also provides email correspondence she received on June 18, 2013, from Counsel indicating the above stated records were withheld under attorney-client privilege pursuant to N.J.S.A. 47:1A-1.1. Counsel also asserts the records were withheld under the exemption for information created by or on behalf of public employers or employees related with grievances filed by or against an individual. N.J.S.A. 47:1A-10.

Finally, in Item 9 of her SOI the Custodian certifies that the records were withheld pursuant to N.J.S.A. 47:1A-9(a), which allows exemptions from disclosure contained in other state statutes to apply under OPRA, and N.J.S.A. 10:4-12, which allows governing bodies to exempt from disclosure discussions related to personnel matters.

### Analysis<sup>4</sup>

#### Unlawful Denial of Access

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 Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the GRC<sup>5</sup> in which the GRC dismissed the complaint by

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<sup>4</sup> There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

<sup>5</sup> Paff v. N.J. Dep’t of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

accepting the custodian's legal conclusion for the denial of access without further review. The court stated that:

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

The court also stated that:

“[t]he statute also contemplates the GRC’s *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the ‘Open Public Meetings Act,’ N.J.S.A. 10:4-6 to -21, it also provides that the GRC ‘may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.’ N.J.S.A. 47:1A-7f. This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.”

Further, the court stated that:

“[w]e hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal...There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC’s obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.”

Therefore, pursuant to Paff the GRC must conduct an *in camera* review of the requested record (Township Council’s executive session minutes for the months of December 2012, January 2013, and February 2013) to determine the validity of the Custodian’s assertion that the record constitutes attorney-client privilege, discussions of personnel matters, and/or information generated by or on behalf of a public employer/employee in connection with a grievance filing. 379 N.J. Super. 346; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.S.A. 10:4-12, N.J.S.A. 47:1A-10.

### **Knowing & Willful**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending outcome of the Council’s *in camera* review.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Pursuant to Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the requested record (Township Council's executive session minutes for the months of December 2012, January 2013, and February 2013) to determine the validity of the Custodian's assertion that the record constitutes attorney-client privilege, discussions of personnel matters, and/or information generated by or on behalf of a public employer/employee in connection with a grievance filing, which are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.S.A. 10:4-12, N.J.S.A. 47:1A-10.
2. **The Custodian must deliver<sup>6</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records, a document or redaction index<sup>7</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>8</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. 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 outcome of the Council's *in camera* review.

Prepared By: Samuel A. Rosado, Esq.  
Staff Attorney

Approved By: Brandon D. Minde, Esq.  
Executive Director

November 12, 2013

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<sup>6</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>7</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>8</sup> "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."