



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

Edwin J. Skidmore
Complainant

Complaint No. 2013-194

v.

Lebanon Township (Hunterdon)
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 June 24, 2014 Interim Order because she responded in the prescribed extended time frame providing the redacted records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to portions of the requested billing invoices, she ultimately provided lawfully redacted copies of the records to the Complainant. 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 30th 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**

**Edwin J. Skidmore¹
Complainant**

GRC Complaint No. 2013-194

v.

**Lebanon Township (Hunterdon)²
Custodial Agency**

Records Relevant to Complaint: “[C]opies of billing invoices submitted to the Township from the law firm Gebhardt & Kiefer, (Township Attorney Cushing) for January through April (inclusive) 2013.”

Custodian of Record: Karen Sandorse

Request Received by Custodian: May 7, 2013

Response Made by Custodian: Unknown

GRC Complaint Received: July 2, 2013

Background

June 24, 2014 Council Meeting:

At its June 24, 2014 public meeting, the Council considered the June 17, 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 complied with the Council’s January 28, 2014 Interim Order because she responded in the prescribed extended time frame providing the requested records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian lawfully denied access to portions of the requested records based on N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-1.1, but the Custodian must also disclose to the Complainant the material which, as indicated in the above table, is not exempt from disclosure.
3. **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**

¹ No representation listed in record.

² The Custodian is represented by Tara A. St. Angelo, Esq. (Clinton, NJ).

the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.³

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.

Procedural History:

On June 25, 2014 the Council distributed its Interim Order to all parties. On June 27, 2014, the Custodian requested an extension of time to respond until July 18, 2014. On July 3, 2014, the Custodian requested a revised extension of time to respond until July 22, 2014.

On July 21, 2014, the Custodian responded to the Council's Interim Order by providing a certification and redacted copies of the requested billing invoices.

Analysis

Compliance

At its June 24, 2014 meeting, the Council ordered the Custodian to disclose to the Complainant the material which, as determined by the Council's *in camera* inspection of the requested records, was not exempt from disclosure within five (5) business days from receipt of same and to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On June 25, 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 July 2, 2014.

On June 27, 2014, the second (2nd) business day after receipt of the Council's Order, the Custodian requested an extension of time to respond until July 18, 2014. On July 3, 2014, the Custodian requested a revised extension of time to respond until July 22, 2014. On July 21, 2014, the Custodian responded to the Council's Interim Order by providing a certification and redacted copies of the requested billing invoices.

Therefore, the Custodian complied with the Council's June 24, 2014 Interim Order because she responded in the prescribed extended time frame providing the redacted records and simultaneously provided certified confirmation of compliance to the Executive Director.

³ 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.

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 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)).

Although the Custodian unlawfully denied access to portions of the requested billing invoices, she ultimately provided lawfully redacted copies of the records to the Complainant. 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 June 24, 2014 Interim Order because she responded in the prescribed extended time frame providing the redacted records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to portions of the requested billing invoices, she ultimately provided lawfully redacted copies of the records to the Complainant. 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: Robert T. Sharkey, 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

June 24, 2014 Government Records Council Meeting

Edwin Skidmore
Complainant

Complaint No. 2013-194

v.

Lebanon Township (Hunterdon)
Custodian of Record

At the June 24, 2014 public meeting, the Government Records Council (“Council”) considered the June 17, 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 complied with the Council’s January 28, 2014 Interim Order because she responded in the prescribed extended time frame providing the requested records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian lawfully denied access to portions of the requested records based on N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-1.1, but the Custodian must also disclose to the Complainant the material which, as indicated in the above table, is not exempt from disclosure.
3. **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.¹**
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.

¹ 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.

Interim Order Rendered by the
Government Records Council
On The 24th Day of June, 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: June 25, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director
June 24, 2014 Council Meeting**

**Edwin J. Skidmore¹
Complainant**

GRC Complaint No. 2013-194

v.

**Lebanon Township (Hunterdon)²
Custodial Agency**

Records Relevant to Complaint: “[C]opies of billing invoices submitted to the Township from the law firm Gebhardt & Kiefer, (Township Attorney Cushing) for January through April (inclusive) 2013.”

Custodian of Record: Karen Sandorse
Request Received by Custodian: May 7, 2013
Response Made by Custodian: Unknown
GRC Complaint Received: July 2, 2013

Records Submitted for *In-Camera* Examination: Redacted and unredacted copies of the responsive billing invoices dates March 8, 2013 and April 29, 2013.

Background

January 28, 2014 Council Meeting:

At its January 28, 2014 public meeting, the Council considered the January 21, 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, found that:

1. The GRC must conduct an *in camera* review of the requested billing invoices submitted to the Township from January 2013 through April 2013 to determine the validity of the Custodian’s assertion that the records constitute attorney-client and work product privileged material exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-9(b).
2. **The Custodian must deliver³ to the Council in a sealed envelope nine (9) copies of the requested redacted records (see item number one (1) above), a document**

¹ No representation listed in record.

² The Custodian is represented by Richard P. Cushing, Esq. (Clinton, NJ).

or redaction index⁴, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,⁵ 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 Custodian's compliance with the Council's Interim Order.

Procedural History:

On January 29, 2014 the Council distributed its Interim Order to all parties. On February 6, 2014, Counsel responded to the Council's Interim Order by submitting redacted and unredacted copies of the requested records, an accompanying document index, and the Custodian's supplemental certification.

Analysis

Compliance

At its January 28, 2014 meeting, the Council ordered the Custodian to disclose nine (9) copies each of the redacted and unredacted billing invoices submitted to the Township from January 2013 through April 2013, a redaction index, and a legal certification from the Custodian within five (5) business days from receipt of the Order to the GRC. On January 29, 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. On February 5, 2014, the Governor of the State of New Jersey declared a State of Emergency. Thus, the Custodian's response was due by close of business on February 6, 2014.

On February 6, 2014, Counsel disclosed the redacted and unredacted copies of the requested records, the document index, and a copy of the Custodian's certification to the GRC.

Therefore, the Custodian complied with the Council's January 28, 2014 Interim Order because she responded in the prescribed extended time frame providing the requested records and simultaneously provided certified confirmation of compliance to the Executive Director.

Unlawful Denial of Access

³ 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.

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

⁵ "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."

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.

The Custodian acknowledges that bills are considered government records subject to immediate access under OPRA, but states that such documents can be redacted if there is a basis for doing so. *Citing* N.J.S.A. 47:1A-5(g); Courier Post v. Lenape Reg’l High Sch. Dist. 360 N.J. Super. 191, 203 (Law Div. 2002). The Custodian asserts that the redactions represent: (1) attorney-client privileged communications between a member of the Township’s governing body and counsel; or (2) information pertaining to the preparation of documents in anticipation of litigation, including attorneys’ mental impressions, conclusions, opinions, or legal theories. *Citing* N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(b). The Custodian contends that while the invoices may have been processed by an employee outside of the attorney-client relationship, “[i]n the context of public entities, the privilege not only extends to communications between the public body, the attorney retained to represent it, necessary intermediaries and agents through whom communications are conveyed” Hyman v. City of Jersey City, A-0789-10T4, 2012 WL 3640673 (N.J. Super. Ct. App. Div. Aug. 27, 2012). The Custodian argues that rather than withholding entire documents from the Complainant, she has permissibly provided him with redacted copies of the invoices that still allow him to “assess the applicability of the privilege.” Hyman, 2012 WL 3640673.

OPRA provides that a “government record” shall not include:

any record within the attorney-client privilege. This paragraph shall not be construed as exempting from access attorney or consultant bills or invoices except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege

N.J.S.A. 47:1A-5(g).

To assert attorney-client privilege, a party must show that there was a confidential communication between lawyer and client in the course of that relationship and in professional confidence. N.J.R.E. 504(1). Such communications are only those “which the client either expressly made confidential or which [one] could reasonably assume under the circumstances would be understood by the attorney to be so intended.” State v. Schubert, 235 N.J. Super. 212, 221 (App. Div. 1989). However, merely showing that “the communication was from client to attorney does not suffice, but the circumstances indicating the intention of secrecy must appear.” Id. at 220-21.

Similarly, “[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 billings 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).

The GRC conducted an *in camera* examination on the submitted records. The GRC analyzed the asserted exemptions based on the redaction index produced by the Custodian. Notably, while this index and the accompanying documents cited the statutory basis for the redactions, no further explanatory information was provided.

The results of this examination are set forth in the following table:

Record or Redaction Number	Record Name/Date	Description of Redaction	Custodian's Explanation & Citation for Redactions	Findings of the <i>In Camera</i> Examination⁶
Invoice #231224 dated 3/8/13	Entry dated 1/2/13	Identity of individual associated with COAH mortgage agreement. Identity of individual attorney conferenced with regarding reorganization meeting.	Protection of a citizen's reasonable expectation of privacy (N.J.S.A. 47:1A-1); Attorney-client privilege (N.J.S.A.	The first word of the "KJ" entry is exempt from disclosure pursuant to N.J.S.A. 47:1A-1 to protect a citizen's reasonable expectation of privacy. The Custodian's redaction is lawful. The remaining redacted information is not attorney-client privileged material.

⁶ **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

			47:1A-1.1).	The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/3/13	Identity of individual attorney communicated with regarding cemetery statutes.	Attorney-client privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/4/13	Type of document, and party to that document, analyzed by attorney.	Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/7/13	Subject of analysis done by attorney and party attorney communicated with regarding same.	Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The

				Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/8/13	Subject of analysis done by attorney, party attorney communicated with, and subject of that communication.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/10/13	Identity of individual attorney conferenced with and subject of conference. Subject of analysis done by attorney.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/14/13	Identity of individual attorney conferenced with and topics reviewed for meeting.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/15/13	Subject of research done by attorney.	Attorney work product privilege (<u>N.J.S.A.</u>	The redacted information is not work product privileged material. The information is general

			47:1A-1.1).	enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/16/13	Description of document reviewed by attorney and identity of individual attorney conferenced with. Type of document analyzed by attorney.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/17/13	Subject of analysis performed by attorney. Subject of analysis performed by attorney regarding changes to a document.	Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/18/13	Identities of parties attorney communicated with regarding disaster loan application.	Attorney-client privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose

				the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/20/13	Type and authorship of documents reviewed by attorney.	Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/21/13	Identities of individuals associated with COAH mortgages, subject of research done by attorney, and type of document prepared by attorney.	Protection of a citizen's reasonable expectation of privacy (<u>N.J.S.A. 47:1A-1</u>); Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The first word, the word between "and" and "COAH" on the first line, the word between "Draft" and "repayment" on the third line, the word between "draft" and "repayment" on the fourth line, the word between "draft" and "lan" (<i>sic</i>) on the fifth line, and the word between "draft" and "loan" on the sixth line are exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1</u> to protect citizens' reasonable expectations of privacy. The Custodian's redaction is lawful. The remaining redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose

				the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/25/13	Identities of individuals associated with COAH mortgages, individual attorney conferenced with, and topic of communications.	Protection of a citizen's reasonable expectation of privacy (<u>N.J.S.A. 47:1A-1</u>); Attorney-client privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The words prior to "COAH documents," and the words between "correspondence to" and "regarding same," are exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1</u> to protect citizens' reasonable expectations of privacy. The Custodian's redaction is lawful. The remaining redacted information is not attorney-client privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/28/13	Identities of parties who received correspondence regarding deed. Topics of analyses done by attorney.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/29/13	Topics of analyses/research done by attorney.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work

				product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #231224 dated 3/8/13	Entry dated 1/30/13	Identity of party who prepared communication reviewed by attorney.	Attorney-client privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/2/13	Identity of party who prepared communication reviewed by attorney. Identity of party attorney communicated with, and subject of communication.	Attorney-client privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/4/13	Identity of parties attorney corresponded with. Topics analyzed by attorney. Identities of parties attorney communicated with and topics analyzed by attorney.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.

Invoice #214286 dated 4/29/13	Entry dated 2/6/13	Identities of parties attorney conferenced with.	Attorney-client privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/7/13	Topics analyzed by attorney and identity of party attorney communicated with.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/8/13	Identities of parties attorneys conferenced with, and topics of conferences and research done.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/11/13	Topic of research performed by attorney. Identity of party attorney communicated with regarding note of imminent	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work

		hazard.		product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/12/13	Topic of research performed by attorney and memorandum prepared regarding same.	Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/13/13	Topic of memorandum prepared by attorney.	Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/14/13	Type of document reviewed by attorney and topic analyzed. Identities of parties attorney conferenced with, topic of conference, and identities of parties attorney called.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The words between “conference with” and “call to” in the first “RPC” entry are exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> as attorney-client privileged material. The Custodian’s redaction is lawful. The remaining redacted information is not attorney-client or work product privileged material. The

				information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/15/13	Identities of parties attorney conferenced with and topic discussed. Topic of document reviewed by attorney. Topic of research performed by attorney.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/18/13	Topic of research performed by attorney.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/20/13	Identities of individuals attorney conferenced with.	Attorney-client privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The

				Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/21/13	Topic of analysis performed by attorney.	Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/22/13	Topic of review conducted by attorney.	Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/25/13	Topics analyzed by attorneys and topic of resulting memorandum prepared by attorney.	Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/26/13	Topics of research and analysis performed by	Attorney work product privilege (<u>N.J.S.A.</u>	The words between “check on” and “analysis of” are exempt from disclosure pursuant to <u>N.J.S.A.</u>

		attorney. Topics of documents prepared by attorney.	47:1A-1.1).	47:1A-1.1 as work product privileged material. The Custodian's redaction is lawful. The remaining redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/27/13	Identities of parties attorney conferenced with and topic reviewed by attorney.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 2/28/13	Topics analyzed by attorney. Content of documents prepared by attorney.	Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286	Entry dated 3/4/13	Identities of parties attorney	Attorney-client and	The redacted information is not attorney-client or

dated 4/29/13		communicated with, topics discussed with individuals, and topics analyzed by attorneys.	work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 3/5/13	Identities of parties attorney communicated with and topics discussed, and nature of document prepared.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 3/6/13	Type of service provided and individuals with whom attorney communicated.	Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 3/7/13	Individual attorney conferenced with and topics discussed. Total dollar amount billed by attorney for .6 hours of work. Individual	Attorney-client privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to

		attorney communicated with and topic discussed.		<u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 3/12/13	Identities of parties attorney communicated with and topic discussed. Authorship of documents reviewed, identity of individual attorney communicated with and topic discussed.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 3/13/13	Identity of individual attorney communicated with and types of documents attorney reviewed.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 3/18/13	Topics analyzed by attorney and identity of individuals attorney conferenced with.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated	Entry dated 3/19/13	Topics research and types of services provided	Attorney-client and work product	The redacted information is not attorney-client or work product privileged

4/29/13		by attorney.	privilege (N.J.S.A. 47:1A-1.1).	material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 3/20/13	Individual attorney updated and topic of discussion. Topics reviewed by attorney. Individual attorney communicated with and topic discussed. Topic analyzed by attorney. Topic reviewed by attorney. Nature of document prepared by attorney.	Attorney-client and work product privilege (N.J.S.A. 47:1A-1.1).	<p>The words following “review of” in the second “LCS” entry, and the words following “preparation of” in the fourth “LCS” entry, are exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> as work-product privileged material. The Custodian’s redaction is lawful.</p> <p>The remaining redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.</p>
Invoice #214286 dated 4/29/13	Entry dated 3/21/13	Topics researched and analyzed by attorneys.	Attorney-client and work product privilege (N.J.S.A. 47:1A-1.1).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to

				<u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 3/22/13	Type of document reviewed by attorney. Type of document drafted by attorney and nature of that document.	Attorney work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	<p>The words following “draft” are exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> as work-product privileged material. The Custodian’s redaction is lawful.</p> <p>The remaining redacted information is not work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.</p>
Invoice #214286 dated 4/29/13	Entry dated 3/25/13	Identity of individual attorney communicated with and topic of communication.	Attorney-client privilege (<u>N.J.S.A. 47:1A-1.1</u>).	<p>The redacted information is not attorney-client privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.</p>
Invoice #214286 dated 4/29/13	Entry dated 3/26/13	Identities of individuals attorney conferenced with and nature of service provided by attorney. Topics analyzed	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	<p>The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt</p>

		by attorney. Type and content of document prepared by attorney.		from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 3/27/13	Identities of individuals attorney communicated with and type of document attorney received from such individual.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	The redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.
Invoice #214286 dated 4/29/13	Entry dated 3/28/13	Identities of individuals associated with documents reviewed by attorney. Types of documents reviewed and drafted. Identities of recipients of documents drafted by attorney. Topic researched by attorney. Identities of individuals conferenced with. Topic reviewed by attorney and individual.	Attorney-client and work product privilege (<u>N.J.S.A. 47:1A-1.1</u>).	<p>The first word and the word prior to “review of” on the second line of the first “KJ” entry, and the first word of the second “KJ” entry, are exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1</u> to protect a citizen’s reasonable expectation of privacy. The Custodian’s redaction is lawful.</p> <p>The remaining redacted information is not attorney-client or work product privileged material. The information is general enough that it does not reveal any legal advice, strategy, or work product and is not exempt from disclosure pursuant to <u>N.J.S.A. 47:1A-1.1</u> The Custodian must disclose the unlawfully redacted information.</p>

Thus, the Custodian lawfully denied access to portions of the requested records based on N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-1.1, but the Custodian must also disclose to the Complainant the material which, as indicated in the above table, is not exempt from disclosure.

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 Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's January 28, 2014 Interim Order because she responded in the prescribed extended time frame providing the requested records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian lawfully denied access to portions of the requested records based on N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-1.1, but the Custodian must also disclose to the Complainant the material which, as indicated in the above table, is not exempt from disclosure.
3. **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.⁷**
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: Robert T. Sharkey, Esq.
Staff Attorney

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

June 17, 2014

⁷ 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
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

January 28, 2014 Government Records Council Meeting

Edwin J. Skidmore
Complainant

Complaint No. 2013-194

v.

Lebanon Township (Hunterdon)
Custodian of Record

At the January 28, 2014 public meeting, the Government Records Council (“Council”) considered the January 21, 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 GRC must conduct an *in camera* review of the requested billing invoices submitted to the Township from January 2013 through April 2013 to determine the validity of the Custodian’s assertion that the records constitute attorney-client and work product privileged material exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-9(b).
2. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested redacted records (see item number one (1) above), a document or redaction index², as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,³ 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 Custodian’s compliance with the Council’s Interim Order.

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

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

³ “I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.”

Interim Order Rendered by the
Government Records Council
On The 28th Day of January, 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: January 29, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 28, 2014 Council Meeting**

**Edwin J. Skidmore¹
Complainant**

GRC Complaint No. 2013-194

v.

**Lebanon Township (Hunterdon)²
Custodial Agency**

Records Relevant to Complaint: “[C]opies of billing invoices submitted to the Township from the law firm Gebhardt & Kiefer, (Township Attorney Cushing) for January through April (inclusive) 2013.”

Custodian of Record: Karen Sandorse
Request Received by Custodian: May 7, 2013
Response Made by Custodian: Unknown
GRC Complaint Received: July 2, 2013

Background³

Request and Response:

On May 7, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The record is unclear as to when the Custodian first responded to the Complainant, but on May 17, 2013, seven (7) business days after making the request, the Complainant retrieved redacted copies of the requested records from the Lebanon Township (“Township”) offices.

On September 3, 2013, the Custodian provided to the Complainant a second, less-redacted copy of the requested invoices.

Denial of Access Complaint:

On July 2, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant states that the 136 billing entries in the invoices he retrieved from the Township on May 17, 2013 had been redacted “to the point of

¹ No representation listed in record.

² The Custodian is represented by Richard P. Cushing, Esq. (Clinton, NJ).

³ 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.

meaninglessness.” The Complainant argues that because attorney-client privileged material consists of communications that are confidential in nature and integral to the professional relationship between a lawyer and client, it is unreasonable to believe that a law firm would include on a billing invoice the volume of material now redacted. The Complainant also contends that the processing of the invoices by an employee outside of the attorney-client relationship results in a waiver of the asserted privilege. The Complainant additionally contends that the Custodian’s “blanket” assertion of attorney-client privilege is too broad, and that more detail for each individual redaction is necessary.

Statement of Information:

On October 15, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s OPRA request on May 7, 2013, and that the Complainant came to the Township’s offices on May 17, 2013 to pick up the requested invoices. The Custodian states that the Township’s attorneys removed some of the original redactions made to the invoices following the filing of this complaint and emailed the revised documents to the Complainant on September 3, 2013.

The Custodian acknowledges that bills are considered government records subject to immediate access under OPRA, but states that such documents can be redacted if there is a basis for doing so. *Citing N.J.S.A. 47:1A-5(g); Courier Post v. Lenape Reg’l High Sch. Dist.* 360 N.J. Super. 191, 203 (Law Div. 2002). The Custodian asserts that the redactions represent: (1) attorney-client privileged communications between a member of the Township’s governing body and counsel; or (2) information pertaining to the preparation of documents in anticipation of litigation, including attorneys’ mental impressions, conclusions, opinions, or legal theories. *Citing N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(b).* The Custodian contends that while the invoices may have been processed by an employee outside of the attorney-client relationship, “[i]n the context of public entities, the privilege not only extends to communications between the public body, the attorney retained to represent it, necessary intermediaries and agents through whom communications are conveyed” *Hyman v. City of Jersey City*, A-0789-10T4, 2012 WL 3640673 (N.J. Super. Ct. App. Div. Aug. 27, 2012). The Custodian argues that rather than withholding entire documents from the Complainant, she has permissibly provided him with redacted copies of the invoices that still allow him to “assess the applicability of the privilege.” *Hyman*, 2012 WL 3640673. The Custodian contends that, as such, no privilege must be produced.

Additional Submissions:

On November 5, 2013, the Complainant submitted a response to the Custodian’s SOI. The Complainant notes that the second copies of the billing invoices he received are generally less-redacted, but in some instances contain newly redacted lines. The Complainant argues that further explanations are required for each redaction to allow him to fully assess the applicability of the claimed privilege. The Complainant also argues that it is the content of communications that are privileged, not the fact that such communications occurred.

Analysis

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. NJ Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council⁴ that dismissed the complaint after 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.” Id. The Court stated that:

The 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-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

Id. at 355.

Further, the Court stated that:

We 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.

Id.

Here, the Custodian disclosed redacted copies of the requested billing invoices on May 17, 2013, and on September 3, 2013. The Custodian asserts that the redacted portions of the records contain material that represents privileged attorney-client communications and attorney work product. Though the second set of disclosed invoices are less heavily redacted than those

⁴ Paff v. N.J. Dep’t of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

initially turned over, the nature of the records and the significant remaining quantity redacted material suggests that further examination is necessary to effectuate the “meaningful review of . . . [the Township’s] decision” contemplated by OPRA. Paff, 379 N.J. Super. at 346.

Therefore, the GRC must conduct an *in camera* review of the requested billing invoices submitted to the Township from January 2013 through April 2013 to determine the validity of the Custodian’s assertion that the records constitute attorney-client and work product privileged material exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-9(b).

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 Custodian’s compliance with the Council’s Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The GRC must conduct an *in camera* review of the requested billing invoices submitted to the Township from January 2013 through April 2013 to determine the validity of the Custodian’s assertion that the records constitute attorney-client and work product privileged material exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-9(b).
2. **The Custodian must deliver⁵ to the Council in a sealed envelope nine (9) copies of the requested redacted records (see item number one (1) above), a document or redaction index⁶, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,⁷ 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 Custodian’s compliance with the Council’s Interim Order.

Prepared By: Robert T. Sharkey, Esq.
Staff Attorney

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

January 21, 2014

⁵ 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.

⁶ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁷ “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.”