



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**FINAL DECISION**

**April 29, 2014 Government Records Council Meeting**

Amanda Stone  
Complainant

Complaint No.: 2013-203

v.

Manasquan School District (Monmouth)  
Custodian of Record

At the April 29, 2014 public meeting, the Government Records Council ("Council") considered the April 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 complied with the Council's March 25, 2014 Interim Order because the Custodian in a timely manner delivered to the Council in a sealed envelope nine (9) copies of the requested unredacted records, a document or redaction index, and a legal certification in accordance with R. 1:4-4, that the records provided are the records requested by the Council for the *in camera* inspection.
2. The *in camera* examination set forth in the above table reveals the Custodian has lawfully denied access to the redacted segment of the requested record pursuant to N.J.S.A. 47:1A-6.
3. Because the results of the *in camera* examination revealed that the Custodian lawfully denied access to the redacted segment of the requested record as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1, the Custodian did not knowingly and willfully violate OPRA and unreasonably deny 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 29<sup>th</sup> Day of April, 2014

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: May 2, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Amanda Stone<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-203**

**v.**

**Manasquan School District (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** The redacted portion of a superintendent search report prepared by Leadership Advantage subtitled “concerns and challenges facing the school district.”

**Custodian of Record:** Margaret Hom

**Request Received by Custodian:** June 28, 2013

**Response Made by Custodian:** July 9, 2013

**GRC Complaint Received:** July 12, 2013

**Records Submitted for *In Camera* Examination:** Report titled MANASQUAN SCHOOL DISTRICT – Superintendent of Schools Search (“Report”) dated June 18, 2013, prepared by Leadership Advantage, LLC.

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

**March 25, 2014 Council Meeting:**

At its March 25, 2014 public meeting, the Government Records Council (“Council”) considered the March 18, 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* examination of the entire report titled “MANASQUAN SCHOOL DISTRICT – Superintendent of Schools Search” prepared by Leadership Advantage, LLC and dated June 18, 2013, to determine the validity of the Custodian’s assertion that the “concerns and challenges facing the school district” section of the report is not subject to disclosure as a government

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

<sup>2</sup> No legal representation listed on record.

<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.

record. *See Paff v. NJ Dep't of Labor, Bd. of Review*, 379 N.J. Super. 346 (App. Div. 2005), and N.J.S.A. 47:1A-1.1.

2. **The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph 1 above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the record provided is the record 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 March 26, 2014, the Council distributed its March 25, 2014 Interim Order to all parties. On March 28, 2014, the Custodian responded to the Council's Interim Order by delivering to the GRC in a sealed envelope nine (9) copies of the requested unredacted record for an *in camera* inspection. The Custodian also included a document or redaction index, as well as a legal certification that the record provided is the record requested by the Council for the *in camera* inspection.<sup>4</sup>

The Custodian also certified that Leadership Advantage was retained by the Manasquan Board of Education ("Board") to assist the Board in developing and recommending search criteria for the Board's consideration of potential candidates for the position of Superintendent of Schools. Leadership Advantage prepared a report containing their recommendations, which is the Report ordered by the Council for *in camera* inspection. The Custodian further certified that on March 25, 2014, the Board voted to approve the Superintendent of Schools and the Custodian disclosed an unredacted copy of the Report to the Complainant on March 27, 2014.

#### Analysis

#### Compliance

On March 25, 2014, the Council ordered the above-referenced compliance. On March 26, 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. The Custodian delivered to the GRC in a sealed envelope nine (9) copies of the requested unredacted record for an *in camera* inspection on March 28, 2014, the second (2<sup>nd</sup>) business day following receipt of the Order.

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<sup>4</sup> The Custodian referenced the unredacted Report submitted for the *in camera* inspection as a "true copy" pursuant to the Interim Order. In addition, on April 3, 2013, the Custodian forwarded to the GRC an unredacted appendix to the Report in nine (9) copies. The Custodian informed the GRC that the appendix, unbeknownst to him, had been inadvertently separated from the unredacted copies of the Report that were submitted to the GRC for the *in camera* inspection.

Therefore, the Custodian complied with the Council's March 25, 2014 Interim Order because the Custodian in a timely manner delivered to the Council in a sealed envelope nine (9) copies of the requested unredacted record, a document or redaction index, and a legal certification in accordance with R. 1:4-4, that the record provided is the record requested by the Council for the *in camera* inspection.

### **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.

The Custodian asserted that the redacted material contained in the Report is exempt advisory, consultative, or deliberative ("ACD") material pursuant to N.J.S.A. 47:1A-1.1. Conversely, the Complainant asserted that she was unlawfully denied access to the requested material, specifically the portion of the Report subtitled "concerns and challenges facing the school district."

OPRA excludes from the definition of a government record "... inter-agency or intra-agency advisory, consultative or deliberative material." N.J.S.A. 47:1A-1.1. It is evident that this phrase is intended to exclude from the definition of a government record the types of documents that are the subject of the "deliberative process privilege."

In O'Shea v. West Milford BOE, GRC Complaint No. 2004-93 (April 2006), the Council stated that:

[N]either the statute nor the courts have defined the terms ... "advisory, consultative, or deliberative" in the context of the public records law. The Council looks to an analogous concept, the deliberative process privilege, for guidance in the implementation of OPRA's ACD exemption. Both the ACD exemption and the deliberative process privilege enable a governmental entity to shield from disclosure material that is pre-decisional and deliberative in nature. Deliberative material contains opinions, recommendations, or advice about agency policies. In Re the Liquidation of Integrity Ins. Co., 165 N.J. 75, 88 (2000); In re Readoption With Amendments of Death Penalty Regulations, 182 N.J. 149 (App. Div. 2004).

The deliberative process privilege is a doctrine that permits government agencies to withhold documents that reflect advisory opinions, recommendations and deliberations submitted as part of a process by which governmental decisions and policies are formulated. NLRB v. Sears, Roebuck & Co., 421 U.S. 132 (1975). Specifically, the New Jersey Supreme Court has ruled that a record that contains or involves factual components is entitled to deliberative-process protection under the exemption in OPRA when it was used in the decision-making process *and* its disclosure would reveal deliberations that occurred during that process. Educ. Law Ctr. v. NJ Dep't of Educ., 198 N.J. 274 (2009). This long-recognized privilege is rooted in the concept that

the sovereign has an interest in protecting the integrity of its deliberations. The earliest federal case adopting the privilege is Kaiser Alum. & Chem. Corp. v. United States, 157 F. Supp. 939 (1958). The privilege and its rationale were subsequently adopted by the federal district courts and circuit courts of appeal. United States v. Farley, 11 F.3d 1385, 1389 (7th Cir.1993).

The deliberative process privilege was discussed at length in Integrity at 84-88. There, the Court addressed the question of whether the Commissioner of Insurance, acting in the capacity of liquidator of a regulated entity, could protect certain records from disclosure which she claimed contained opinions, recommendations or advice regarding agency policy. Id. at 81. The Court adopted a qualified deliberative process privilege based upon the holding of McClain v. Coll. Hosp., 99 N.J. 346 (1985). Id. at 88. In doing so, the Court noted that:

A document must meet two requirements for the deliberative process privilege to apply. First, it must have been generated before the adoption of an agency's policy or decision. In other words, it must be pre-decisional. ... Second, the document must be deliberative in nature, containing opinions, recommendations, or advice about agency policies. ... Purely factual material that does not reflect deliberative processes is not protected. ... Once the government demonstrates that the subject materials meet those threshold requirements, the privilege comes into play. In such circumstances, the government's interest in candor is the “preponderating policy” and, prior to considering specific questions of application, the balance is said to have been struck in favor of non-disclosure.

Id. at 84-85 (citations omitted).

The Court further set out procedural guidelines based upon those discussed in McClain:

The initial burden falls on the state agency to show that the documents it seeks to shield are pre-decisional and deliberative in nature (containing opinions, recommendations, or advice about agency policies). Once the deliberative nature of the documents is established, there is a presumption against disclosure. The burden then falls on the party seeking discovery to show that his or her compelling or substantial need for the materials overrides the government's interest in non-disclosure. Among the considerations are the importance of the evidence to the movant, its availability from other sources, and the effect of disclosure on frank and independent discussion of contemplated government policies.

Integrity, 165 N.J. at 88 (citing McClain, 99 N.J. at 361-62).

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

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian's Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination <sup>5</sup>
1	Report titled "Manasquan School District Superintendent of Schools Search" dated June 18, 2013, prepared by Leadership Advantage, LLC.	The report is twenty-two (22) pages in length, inclusive of the title page and appendix. It provides advice and recommends search criteria for the Board's consideration of potential candidates for the position of Superintendent of Schools.	The redacted portions of the record are exempt from disclosure under OPRA as ACD material pursuant to <u>N.J.S.A. 47:1A-1.1</u>	The record contains recommendations and advice and, as such, is exempt from disclosure in its entirety as advisory, consultative or deliberative material pursuant to <u>N.J.S.A. 47:1A-1.1</u> , <i>a fortiori</i> , the redacted segments of the record, including the redactions contained in the section subtitled "concerns and challenges facing the school district" are exempt from disclosure and the Custodian lawfully withheld them from disclosure. <sup>6</sup>

<sup>5</sup> **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.

<sup>6</sup> The GRC is aware that the Report was determined by the Custodian to no longer be subject to an ACD exemption as of March 25, 2014, when the Board voted to approve the Superintendent position.

## **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 (Berg); 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)).

Here, because the results of the *in camera* examination revealed that the Custodian lawfully denied access to the redacted segment of the requested record as ACD material pursuant to N.J.S.A. 47:1A-1.1, the Custodian did not knowingly and willfully violate OPRA and unreasonably deny 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 March 25, 2014 Interim Order because the Custodian in a timely manner delivered to the Council in a sealed envelope nine (9) copies of the requested unredacted records, a document or redaction index, and a legal certification in accordance with R. 1:4-4, that the records provided are the records requested by the Council for the *in camera* inspection.
2. The *in camera* examination set forth in the above table reveals the Custodian has lawfully denied access to the redacted segment of the requested record pursuant to N.J.S.A. 47:1A-6.
3. Because the results of the *in camera* examination revealed that the Custodian lawfully denied access to the redacted segment of the requested record as advisory,



consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1, the Custodian did not knowingly and willfully violate OPRA and unreasonably deny access under the totality of the circumstances.

Prepared By: John E. Stewart, Esq.

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

April 22, 2014



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

INTERIM ORDER

March 25, 2014 Government Records Council Meeting

Amanda Stone  
Complainant

Complaint No. 2013-203

v.

Manasquan School District (Monmouth)  
Custodian of Record

At the March 25, 2014 public meeting, the Government Records Council ("Council") considered the March 18, 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* examination of the entire report titled "MANASQUAN SCHOOL DISTRICT – Superintendent of Schools Search" prepared by Leadership Advantage, LLC and dated June 18, 2013, to determine the validity of the Custodian's assertion that the "concerns and challenges facing the school district" section of the report is not subject to disclosure as a government record. See *Paff v. NJ Dep't of Labor, Bd. of Review*, 379 N.J. Super. 346 (App. Div. 2005), and N.J.S.A. 47:1A-1.1.
2. **The Custodian must deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph 1 above), 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 record provided is the record 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.

<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 25<sup>th</sup> Day of March, 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: March 26, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 25, 2014 Council Meeting**

**Amanda Stone**<sup>1</sup>  
**Complainant**

**GRC Complaint No. 2013-203**

**v.**

**Manasquan School District (Monmouth)**<sup>2</sup>  
**Custodial Agency**

**Records Relevant to Complaint:** The redacted portion of a superintendent search report prepared by Leadership Advantage subtitled “concerns and challenges facing the school district.”

**Custodian of Record:** Margaret Hom

**Request Received by Custodian:** June 28, 2013

**Response Made by Custodian:** July 9, 2013

**GRC Complaint Received:** July 12, 2013

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

**Request and Response:**

On June 28, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 9, 2013, the sixth (6<sup>th</sup>) business day following receipt of said request, the Custodian responded in writing disclosing to the Complainant a redacted report titled “MANASQUAN SCHOOL DISTRICT – Superintendent of Schools Search” prepared by Leadership Advantage, LLC and dated June 18, 2013. The Custodian included a redaction index which stated the basis for each redaction as exempt advisory, consultative, or deliberative (“ACD”) material pursuant to N.J.S.A. 47:1A-1.1.

**Denial of Access Complaint:**

On July 12, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that she filed her OPRA request on June 28, 2013, and that the Custodian responded to the request on July 9, 2013.

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

<sup>2</sup> No legal representation listed on record.

<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.

The Complainant contends that the Custodian disclosed to her the requested report in redacted form. In particular, the Complainant states that all bullet points under the “concerns and challenges facing the school district” part of the report were redacted. The Complainant states that the “strengths of the district” portion of the report was not redacted. The Complainant further states that she believes the “concerns and challenges” just as the “strengths of the district” are factual findings and do not constitute ACD material. The Complainant states that her argument is supported by the fact that the “strengths of the district” section did not contain any redactions.

#### Statement of Information:

On July 12, 2013, the GRC sent the Custodian a request for the Statement of Information (“SOF”). The Custodian failed to submit the SOI.

#### 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.

Here, the Custodian disclosed to the Complainant the report she determined to be responsive to the Complainant’s request, which is titled: “MANASQUAN SCHOOL DISTRICT – Superintendent of Schools Search” prepared by Leadership Advantage, LLC. Although the report was disclosed, several sections of the report were redacted by the Custodian because she alleged that the redacted sections were exempt as ACD material. The Custodian included a redaction index which identified the redactions.

The Complainant contends that the section in the report subtitled “concerns and challenges facing the school district” was improperly redacted because she believes it contains factual findings, and therefore is not ACD material subject to redaction. The Complainant therefore believes that she was unlawfully denied access to the “concerns and challenges facing the school district” section of the report.

OPRA specifically exempts ACD material from its definition of a government record. N.J.S.A. 47:1A-1.1. Accordingly, if the report does contain ACD material, the report would be exempt from disclosure.

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 GRC in which the GRC dismissed the complaint by accepting the Custodian’s legal conclusion for the denial of access without further review.<sup>4</sup> The Court stated that:

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<sup>4</sup> See Paff v. NJ Department of Labor, Board of Review, GRC Complaint No. 2003-128 (October 2005).

“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-7f, which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.” Id.

Accordingly, the GRC must conduct an *in camera* examination of the entire report titled “MANASQUAN SCHOOL DISTRICT – Superintendent of Schools Search” prepared by Leadership Advantage, LLC and dated June 18, 2013, to determine the validity of the Custodian’s assertion that the “concerns and challenges facing the school district” section of the report is not subject to disclosure as a government record. *See Paff*, 379 N.J. Super. 346 and N.J.S.A. 47:1A-1.1.

### **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* examination of the entire report titled “MANASQUAN SCHOOL DISTRICT – Superintendent of Schools Search”

prepared by Leadership Advantage, LLC and dated June 18, 2013, to determine the validity of the Custodian's assertion that the "concerns and challenges facing the school district" section of the report is not subject to disclosure as a government record. *See Paff v. NJ Dep't of Labor, Bd. of Review*, 379 N.J. Super. 346 (App. Div. 2005), and N.J.S.A. 47:1A-1.1.

2. **The Custodian must deliver<sup>5</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see paragraph 1 above), a document or redaction index<sup>6</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>7</sup> that the record provided is the record 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: John E. Stewart, Esq.

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

March 18, 2014

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<sup>5</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>6</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>7</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."