



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

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

CHARLES A. RICHMAN  
*Commissioner*

**FINAL DECISION**

**January 26, 2016 Government Records Council Meeting**

Michael Zahler  
Complainant

Complaint No. 2013-266

v.

Ocean County College  
Custodian of Record

At the January 26, 2016 public meeting, the Government Records Council (“Council”) considered the January 19, 2016 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 mostly complied with the Council’s November 17, 2015 Interim Order because she responded in the prescribed time frame. Specifically, the Custodian provided all but one (1) record to the Complainant in a timely manner. Additionally, the Custodian twice simultaneously provided certified confirmation of compliance to the Executive Director in a timely manner. Finally, although the Custodian mistakenly did not disclose the March 9, 2012 agenda to the Complainant as part of her initial disclosure, she rectified any outstanding deficiencies immediately upon being notified of same by the GRC on December 18, 2015.
2. The Custodian’s initial response to the Complainant’s clarified/amended OPRA request was legally insufficient and she unlawfully denied access to the responsive out-of-state adjunct list containing all requested information. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); N.J.S.A. 47:1A-6. Moreover, while the Custodian proposed a special service charge that was warranted, the total amount was not reasonable. N.J.S.A. 47:1A-5(c). The Custodian also unlawfully redacted several entries in the responsive minutes and agendas. However, the Custodian did not unlawfully deny access to several parts of the Complainant’s clarified/amended OPRA request and lawfully redacted portions of the responsive minutes and agendas. The Custodian also fully complied with the Council’s July 29, 2014 Interim Order and mostly complied with the Council’s November 17, 2015 Interim Order. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.



This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 26<sup>th</sup> Day of January, 2016

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, 2016**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
January 26, 2016 Council Meeting**

**Michael Zahler<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-266**

v.

**Ocean County College<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:

1. All agreements between Ocean County College (“OCC”) and China for partnership.
2. Vendor reports for all payments and receipts for OCC/China partnership.
3. Bill list for all expenses for travel to China for discussion of OCC/China partnership.
4. Agreement between OCC and Pierson (sic) for student/faculty leads.
5. Vendor reports showing payment to Pierson (sic) for student faculty leads.
6. Classes taught by all out-of-state adjunct faculty between September 2007 and May 2013 to include number of students per class, salary paid for each class taught.

**Custodian of Record:** Sara Winchester

**Request Received by Custodian:** July 30, 2013

**Response Made by Custodian:** August 6, 2013

**GRC Complaint Received:** September 10, 2013

**Background**

**November 17, 2015 Council Meeting:**

At its November 17, 2015 public meeting, the Council considered the November 10, 2015 *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 did not fully comply with the Council’s July 29, 2014 Interim Order because she failed to provide the second certification within the ten (10) business days required. However, the Custodian did timely provide the proposed special service charge to the Complainant and further timely submitted her first (1<sup>st</sup>) certification of compliance to the Executive Director. Additionally, the Custodian

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

<sup>2</sup> Represented by Matthew B. Thompson, Esq., of Berry, Sahradnik, Kotzas & Benson (Toms River, NJ).

provided the required *in camera* records, legal certification, and simultaneous certification of compliance with the extended time frame to comply.

2. Although the Custodian has proved that a special service charge is warranted here, the Custodian may only charge for half the time spent by both Sally Crawford and Lee Manning to compile and prepare the requested record. Specifically, the evidence does not support that the proposed fee represents the actual time and effort required to prepare and disclose the record. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); The Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002); Rivera v. Rutgers, The State Univ. of NJ, GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012). *See also* Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015). Thus, the Custodian is obligated to provide access to the responsive out-of-state adjunct list containing all requested information once the Complainant has remitted payment of \$348.04 for same. *See* Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
3. **The Complainant shall, within five (5) business days from receipt of the Council's Interim Order, deliver to the Custodian (a) a payment in the amount of \$348.04, or (b) a statement declining to purchase the records. Should the Complainant accept and pay the appropriate special service charge, the Custodian shall disclose the responsive records within three (3) business days from receipt of payment. The Complainant's failure to take any action within the five (5) business day period shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5(b) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within ten (10) business days from receipt of the Council's Interim Order the Custodian shall provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4,<sup>3</sup> to the Executive Director with respect to the Complainant's willingness or refusal to purchase the requested records and whether same were disclosed.**
4. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.<sup>4</sup>**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the

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<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."

<sup>4</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

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

### Procedural History:

On November 18, 2015, the Council distributed its Interim Order to all parties.

On November 24, 2015, the Custodian disclosed to the Complainant responsive records in accordance with the Council's *In Camera* Examination.<sup>5</sup> On November 25, 2015, the Custodian provided certified confirmation of compliance to the Executive Director.

On December 2, 2015, the Custodian submitted to the GRC a second (2<sup>nd</sup>) certification wherein she certified that the Complainant did not remit payment of the special service charge or contact OCC declining same; thus, she did not provide the Complainant the responsive out-of-state adjunct list containing all requested information.

On December 18, 2015, the GRC e-mailed the Custodian, advising that it reviewed her compliance material and found that the Custodian did not disclose to the Complainant a copy of the March 9, 2012 personnel agenda<sup>6</sup> in accordance with the Council's *In Camera* Examination. The GRC noted that it was aware of OCC's confusion in relation to the Council's Interim Order based on the fact that the Custodian again provided copies of the agendas for an *in camera* review as a result of a misreading of the Order. The GRC stated that, in order to be in full compliance, the Custodian must disclose the March 9, 2012 agenda and submit certified confirmation of compliance to the Executive Director by close of business on December 23, 2015.

On the same day, the Custodian sent the agenda to the Complainant via e-mail and simultaneously submitted certified confirmation of compliance to the Executive Director.

### Analysis

#### Compliance

At its November 17, 2015 meeting, the Council ordered the Custodian to disclose records in conformance with the Council's *In Camera* Examination and to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director, within five (5) business days. The Council also ordered the Custodian to submit a second (2<sup>nd</sup>) certification within ten (10) business days addressing the Complainant's willingness or refusal to purchase the requested records and whether same were disclosed. On November 18, 2015, the Council distributed its Interim Order to all parties. Thus, the Custodian's response was due by close of business on November 25 and December 4, 2015, respectively.

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<sup>5</sup> The GRC notes that the Custodian also provided redacted and unredacted copies of the March 9 and September 14, 2012 personnel agendas. The Council reviewed said agendas as part of its *In Camera* Examination; however, OCC appeared to believe mistakenly that the November 17, 2015 Order required same to be provided again.

<sup>6</sup> The GRC notes that the Custodian was not required to provide a copy of the September 14, 2012 agenda to the Complainant because the Council determined that she properly redacted same.

On November 24, 2015, the fourth (4<sup>th</sup>) business day after receipt of the Council's Order, the Custodian disclosed responsive records to the Complainant in conformance with the *In Camera* Examination (except the March 9, 2012 agenda). On November 25, 2015, the last day to respond, the Custodian submitted certified confirmation of compliance to the Executive Director. On December 2, 2015, the eighth (8<sup>th</sup>) business day after receipt of the Council's Order, the Custodian submitted another certification in which she certified that the Complainant did not remit payment of the special service charge or contact OCC declining same; thus, she did not provide the Complainant the responsive out-of-state adjunct list containing all requested information. The GRC notes that the Custodian was not obligated to provide the list to the Complainant because he failed to take any action regarding the special service charge.

However, upon review of the compliance materials, the GRC determined that the Custodian did not provide the March 9, 2012 agenda to the Complainant. On December 18, 2015, in acknowledging that her failure to disclose the agenda may have been based on a mistake, the GRC required the Custodian to rectify the issue. The Custodian immediately disclosed the agenda to the Complainant and provided certified confirmation of compliance. Although the Custodian's mistake technically resulted in non-compliance of the Council's Order, the GRC notes the Custodian's diligence in rectifying the issue, once she was advised of same.

Therefore, the Custodian mostly complied with the Council's November 17, 2015 Interim Order because she responded in the prescribed time frame. Specifically, the Custodian provided all but one (1) record to the Complainant in a timely manner. Additionally, the Custodian twice simultaneously provided certified confirmation of compliance to the Executive Director in a timely manner. Finally, although the Custodian mistakenly did not disclose the March 9, 2012 agenda to the Complainant as part of her initial disclosure, she rectified any outstanding deficiencies immediately upon being notified of same by the GRC on December 18, 2015.

### **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)).

In this matter, the Custodian's initial response to the Complainant's clarified/amended OPRA request was legally insufficient and she unlawfully denied access to the responsive out-of-state adjunct list containing all requested information. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); N.J.S.A. 47:1A-6. Moreover, while the Custodian proposed a special service charge that was warranted, the total amount was not reasonable. N.J.S.A. 47:1A-5(c). The Custodian also unlawfully redacted several entries in the responsive minutes and agendas. However, the Custodian did not unlawfully deny access to several parts of the Complainant's clarified/amended OPRA request and lawfully redacted portions of the responsive minutes and agendas. The Custodian also fully complied with the Council's July 29, 2014 Interim Order and mostly complied with the Council's November 17, 2015 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian mostly complied with the Council's November 17, 2015 Interim Order because she responded in the prescribed time frame. Specifically, the Custodian provided all but one (1) record to the Complainant in a timely manner. Additionally, the Custodian twice simultaneously provided certified confirmation of compliance to the Executive Director in a timely manner. Finally, although the Custodian mistakenly did not disclose the March 9, 2012 agenda to the Complainant as part of her initial disclosure, she rectified any outstanding deficiencies immediately upon being notified of same by the GRC on December 18, 2015.
2. The Custodian's initial response to the Complainant's clarified/amended OPRA request was legally insufficient and she unlawfully denied access to the responsive out-of-state adjunct list containing all requested information. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); N.J.S.A. 47:1A-6. Moreover, while the Custodian proposed a special service charge that was warranted, the total amount was not reasonable. N.J.S.A. 47:1A-5(c). The Custodian also unlawfully redacted several entries in the responsive minutes and agendas. However, the Custodian did not unlawfully deny access to several parts of the Complainant's clarified/amended OPRA request and lawfully redacted portions of the responsive minutes and agendas. The Custodian also fully complied with the Council's July 29, 2014 Interim Order and mostly complied with the Council's November 17, 2015 Interim Order. Additionally, the evidence of

record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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

Reviewed By: Joseph D. Glover  
Executive Director

January 19, 2016





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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**INTERIM ORDER**

**November 17, 2015 Government Records Council Meeting**

Michael Zahler  
Complainant

Complaint No. 2013-266

v.

Ocean County College  
Custodian of Record

At the November 17, 2015 public meeting, the Government Records Council (“Council”) considered the November 10, 2015 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 did not fully comply with the Council’s July 29, 2014 Interim Order because she failed to provide the second certification within the ten (10) business days required. However, the Custodian did timely provide the proposed special service charge to the Complainant and further timely submitted her first (1<sup>st</sup>) certification of compliance to the Executive Director. Additionally, the Custodian provided the required *in camera* records, legal certification, and simultaneous certification of compliance with the extended time frame to comply.
2. Although the Custodian has proved that a special service charge is warranted here, the Custodian may only charge for half the time spent by both Sally Crawford and Lee Manning to compile and prepare the requested record. Specifically, the evidence does not support that the proposed fee represents the actual time and effort required to prepare and disclose the record. *See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); The Courier Post v. Lenape Reg’l High Sch.*, 360 N.J. Super. 191, 199 (Law Div. 2002); *Rivera v. Rutgers, The State Univ. of NJ*, GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012). *See also Palkowitz v. Borough of Hasbrouck Heights (Bergen)*, GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015). Thus, the Custodian is obligated to provide access to the responsive out-of-state adjunct list containing all requested information once the Complainant has remitted payment of \$348.04 for same. *See Paff v. City of Plainfield*, GRC Complaint No. 2006-54 (July 2006).
3. **The Complainant shall, within five (5) business days from receipt of the Council’s Interim Order, deliver to the Custodian (a) a payment in the amount of \$348.04, or (b) a statement declining to purchase the records. Should the Complainant accept and pay the appropriate special service charge, the**



**Custodian shall disclose the responsive records within three (3) business days from receipt of payment. The Complainant's failure to take any action within the five (5) business day period shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5(b) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within ten (10) business days from receipt of the Council's Interim Order the Custodian shall provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director with respect to the Complainant's willingness or refusal to purchase the requested records and whether same were disclosed.**

4. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.<sup>2</sup>**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 17<sup>th</sup> Day of November, 2015

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: November 18, 2015**

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<sup>1</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."

<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director  
November 17, 2015 Council Meeting**

**Michael Zahler<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-266**

v.

**Ocean County College<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:

1. All agreements between Ocean County College (“OCC”) and China for partnership.
2. Vendor reports for all payments and receipts for OCC/China partnership.
3. Bill list for all expenses for travel to China for discussion of OCC/China partnership.
4. Agreement between OCC and Pierson (sic) for student/faculty leads.
5. Vendor reports showing payment to Pierson (sic) for student faculty leads.
6. Classes taught by all out-of-state adjunct faculty between September 2007 and May 2013 to include number of students per class, salary paid for each class taught.

**Custodian of Record:** Sara Winchester

**Request Received by Custodian:** July 30, 2013

**Response Made by Custodian:** August 6, 2013

**GRC Complaint Received:** September 10, 2013

**Records Submitted for *In Camera* Examination:**

- Board of Trustee Caucus meeting minutes from January 30, 2012, through June 24, 2013.
- Personnel Agendas for eleven (11) meetings between January 2012 and June 2013.
- Missing Personnel reports dated March 9, 2012 and September 14, 2012.

**Background**

July 29, 2014 Council Meeting:

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

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

<sup>2</sup> Represented by Matthew B. Thompson, Esq., of Berry, Sahradnik, Kotzas & Benson (Toms River, NJ).

1. The Custodian's written response was legally insufficient because the Custodian failed to respond to each item contained in the Complainant's August 8, 2013 clarified/amended OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). *See also* Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Further, because the Custodian failed to provide a specific lawful basis for redactions made to the requested minutes and reports, the Custodian's response to the Complainant's clarified/amended OPRA request is insufficient. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008). Finally, the Custodian's response was equally insufficient because she failed to provide a date certain on which she would respond to the Complainant's clarified/amended request. Hardwick v. NJ Dep't of Transp., GRC Complaint No. 2007-164 (February 2008).
2. The Custodian unlawfully denied access to the responsive list containing all elements identified in the Complainant's initial and clarified/amended OPRA requests. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to support that the information omitted from the lists provided to the Complainant did not exist within the electronic filing systems utilized by Ocean County College. Thus, the Custodian must: (1) disclose to the Complainant the responsive list containing all specifically identified information; or (2) if the Custodian believes a special service charge is warranted, complete a 14-point analysis and provide the Complainant with the estimated cost to provide the responsive records.
3. **The Custodian shall comply with item No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, if necessary, including a detailed document index explaining the lawful basis for each redaction and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>3</sup> to the Executive Director.<sup>4</sup> If applicable, the Custodian shall make the amount of the charge available to the Custodian within three (3) business days from receipt of the Council's Interim Order and provide certified confirmation within the five (5) business days. Thereafter, if the Complainant accepts payment, the Custodian shall disclose to the Complainant the requested records with any appropriate redactions, if necessary, and a detailed document index explaining the lawful basis for any such redaction upon remittance of the special service charge, within ten (10) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4, to the Executive Director at that time. If a special service charge is applicable and the Complainant fails to pay the special service charge for the requested records by the tenth (10<sup>th</sup>) business day from receipt of the Council's**

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<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."

<sup>4</sup> Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**Interim Order, the Custodian shall provide a certification to that effect in accordance with N.J. Court Rule 1:4-4 to the Executive Director at that time.**

4. The Custodian did not unlawfully deny access to records for clarified/amended request Item No. 3 and the portion of clarified/amended request Item No. 4A, because said request items do not contain all necessary criterion to be considered valid requests for correspondence. Thus, said items are overly broad and invalid. *See* MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011).
5. Because the Custodian herein requested in writing clarification of the Complainant's clarified/amended OPRA request No. 4, and because the Complainant failed to provide such clarification, the Custodian has borne her burden of proving a lawful denial of access to the requested records under N.J.S.A. 47:1A-6. Herron v. NJ Dep't of Educ., GRC Complaint No. 2011-363 (December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005); Markarian v. NJ Dep't of Law & Pub. Safety, Div. of Consumer Affairs, GRC Complaint No. 2011-312 (Interim Order dated March 22, 2013).
6. Pursuant to Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the responsive minutes to determine the validity of the Custodian's assertion that the redacted excerpts constitute personnel matters exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); N.J.S.A. 10:4-12. Further, as part of the Custodian's compliance, she must certify to whether the missing minutes alleged to have been withheld exist and, if so, why same were not provided.
7. **The Custodian must deliver<sup>5</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 6 above), nine (9) copies of the redacted records, 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 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.**
8. 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.

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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."

Procedural History:

On July 30, 2014, the Council distributed its Interim Order to all parties.

Interim Order Regarding a Special Service Charge

On August 4, 2014, the third (3<sup>rd</sup>) business day after receipt of the Order, the Custodian sent the Complainant a proposed special service charge of \$606.08, based on the 14-point analysis for manually compiling the list containing all elements identified in the Complainant's initial and clarified/amended OPRA requests as follows:

**1. What records are requested?**

**Response:** Classes taught by all out-of-state adjunct faculty between September 2007 and May 2013 to include the number of students in each class and salary paid for each class.

**2. Give a general nature description and number of the government records requested.**

**Response:** Seven (7) years of data for 398 adjuncts (in-state and out-of-state).

**3. What is the period of time over which the records extend?**

**Response:** Seven (7) years of data (2007-2013).

**4. Are some or all of the records sought archived or in storage?**

**Response:** Information is in data storage.

**5. What is the size of the agency (total number of employees)?**

**Response:** 820 employees, including administrators, staff, faculty and adjuncts.

**6. What is the number of employees available to accommodate the records request?**

**Response:** 2 employees.

**7. To what extent do the requested records have to be redacted?**

**Response:** No redactions necessary.

**8. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to locate, retrieve and assemble the records for copying?**

**Response:** The Programmer will need twelve (12) hours and a Human Resources ("HR") staff member will need two (2) hours to verify criteria and rates.

**9. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?**

**Response:** See No. 8

**10. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to return records to their original storage place?**

**Response:** N/A

**11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?**

**Response:** N/A

**12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?**

**Response:** Sally Crawford, Programmer - \$45.00.  
Lee Manning, HR Info Systems Supervisor - \$33.04.

Total: \$606.80

**13. What is the availability of information technology and copying capabilities?**

**Response:** No copying needed.

**14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce and return the requested documents.**

**Response:** See No. 8. Because salary per class does not exist in spreadsheet form, Mr. Mr. Hatem Akl, Chief Information Officer, advised that obtaining same would be a major programming effort.

On August 5, 2014, the fifth (5<sup>th</sup>) business day after receipt of the Order, the Custodian sent the GRC her first (1<sup>st</sup>) response. The Custodian certified that, prior to initially responding to the Complainant's OPRA request in July 2013, she contacted Mr. Akl, who advised that Ocean County College ("OCC") did not utilize a program that could collate all requested information into one (1) comprehensive list. The Custodian affirmed that she was also advised that OCC would have to extract information from several programs manually. The Custodian certified that, notwithstanding the above, she attempted to satisfy the Complainant's request for the list on two (2) occasions to no avail. The Custodian certified that, in response to the Council's July 30, 2014 Interim Order, she advised the Complainant of the proposed special service charge on August 4, 2014.

On August 21, 2014, the Complainant e-mailed the GRC, advising that he objected to the proposed special service charge and asked whether there is a specific procedure for formalizing his objection. On the same day, the GRC advised the Complainant that he may submit objections as soon as possible.

On August 21, 2014, the Custodian e-mailed the GRC, asking if her August 5, 2014 certification was sufficiently delivered to the GRC. The GRC responded, advising the Custodian that she was required to submit a second (2<sup>nd</sup>) certification, pending either the Complainant's agreement to the special service charge or by August 13, 2014, the tenth (10<sup>th</sup>) business day after receipt of the Council's Interim Order.

On August 21, 2014, the sixteenth (16<sup>th</sup>) business day after receipt of the Order, the Custodian sent the GRC her second (2<sup>nd</sup>) certification. The Custodian certified that she provided the proposed special service charge to the Complainant on August 4, 2014. The Custodian affirmed that the Complainant has not forwarded payment as of this date.

On August 30, 2014, the Complainant submitted objections to the Custodian's proposed special service charge. The Complainant asserted that his OPRA request sought six (6) years of records (as opposed to seven (7) stated in the Custodian's chart). Next, the Complainant asserted that his request sought information for out-of-state adjuncts only. The Complainant noted that, at no time in the last ten (10) years, were there more than 72 adjuncts; thus, the Custodian's assertion that 300 or more individuals' information would be at issue is misleading. Further, the Complainant contended that all requested information is in Excel format. The Complainant asserted that required only the minor steps of sorting out adjuncts and cutting and pasting those fields into a new Excel spreadsheet. The Complainant asserted that, if the data exists, the Custodian should be required to identify the number of databases to be accessed, their content and format, and the specific manipulation required to extract the responsive data. The Complainant also contended that the Custodian did not provide adequate support for the salaries of Lee Manning and Sally Crawford.

#### Interim Order Regarding an *In Camera* Review

On August 6, 2014, the Custodian requested an extension until August 8, 2014, to submit the required *in camera* records and certifications. On August 7, 2014, the GRC granted the extension.

On August 8, 2014, the last day of the extension, the Custodian responded to this portion of the Council's Interim Order. The Custodian certified that, on August 8, 2013, the Complainant amended his original OPRA request to include executive session minutes and personnel reports from January 2012 to June 2013. The Custodian also stated that, in his Amended Denial of Access Complaint, the Complainant alleged that the Custodian failed to provide him with eleven (11) personnel reports for May 9, 2012, September 14, 2012, and January through June 2013. However, on September 11, 2013, the Custodian e-mailed the requested records to the Complainant. The Custodian also certified that the "attempted redactions" in the Personnel Agendas were actually areas where the marker bled through the page.



## Analysis

### Compliance

At its July 29, 2014 meeting, the Council ordered the Custodian to provide the responsive adjunct list to the Complainant with all requested information. The Council required that, in the instance that OCC believed a special service charge was applicable, the Custodian send a proposed fee to the Complainant within three (3) business days and submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director within five (5) business days. Additionally, the Council ordered the Custodian to submit a second (2<sup>nd</sup>) certification, advising whether the Complainant accepted the charge and remitted payment within ten (10) business days. Finally, the Council ordered the Custodian to provide nine (9) copies of redacted and unredacted minutes and an explanation as to the minutes the Complainant alleged he did not receive. On July 30, 2014, the Council distributed its Interim Order to all parties, providing the Custodian the forgoing time frames to comply with the terms of the Order. Thus, the Custodian's response was due by close of business on August 4, 6, and 13, 2014 respectively.

### Special Service Charge

On August 4, 2014, the third (3<sup>rd</sup>) business day after receipt of the Council's Order, the Custodian provided a 14-point analysis indicating the proposed special service charge to the Complainant and GRC. On August 5, 2014, the fourth (4<sup>th</sup>) business days after receipt of the Council's Order, the Custodian submitted her first (1<sup>st</sup>) certified confirmation of compliance to the Executive Director. However, the Custodian did not submit her second (2<sup>nd</sup>) certification, advising that the Complainant did not pay the special service charge, until August 21, 2014, the sixteenth (16<sup>th</sup>) business day after receipt of the Council's Order.

### In Camera Review

On August 6, 2014, the Custodian sought an extension of time until August 8, 2014, to submit the required *in camera* records and certifications. The GRC granted said extension on August 7, 2014. On August 8, 2014, the Custodian provided nine (9) copies of the redacted and unredacted minutes, as well as a certification addressing the Complainant's allegation of missing minutes. Additionally, the Custodian provided certified confirmation of compliance to the Executive Director.

Therefore, the Custodian did not fully comply with the Council's July 29, 2014 Interim Order because she failed to provide the second certification within the ten (10) business days required. However, the Custodian did timely provide the proposed special service charge to the Complainant and further timely submitted her first (1<sup>st</sup>) certification of compliance to the Executive Director. Additionally, the Custodian provided the required *in camera* records, legal certification and simultaneous certification of compliance with the extended time frame.

### Special Service Charge

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.

Whenever a records custodian asserts that fulfilling an OPRA records request requires an “extraordinary” expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides:

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies . . . .

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

The determination of what constitutes an “extraordinary expenditure of time and effort” under OPRA must be made on a case by case basis and requires an analysis of the variety of factors discussed in The Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002). There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the “extraordinary burden” placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve, and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

The Court determined that in the context of OPRA, the term “extraordinary” will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. Id. at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” Id.

In Rivera v. Rutgers, The State Univ. of NJ, GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012), the Council was tasked with determining whether the custodian's proposed special service charge was reasonable and warranted. Specifically, the custodian proposed a charge based on 1.5 hours of time for the Discovery Clerk to retrieve, review, and copy records, as well as three (3) hours for a university officer to perform a number of duties. The Council rejected the Discovery Clerk's charge because the evidence did not indicate that she would expend an extraordinary amount of time and effort to locate and review a *de minimus* amount of records not otherwise contained in storage. However, the Council accepted the University officer's charge, noting that the evidence supported that substantive work was required, that he would not be able to perform any other duties while working on the request, and that he had already spent significant time.

Additionally, although decided during the pendency of this complaint, the Council's decision in Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015) is instructive. There, the custodian proposed a special service charge based on only 4.5 of the 14.5 hours spent to provide 162 pages of records reflecting eight (8) months of personnel and various other information. The GRC reduced the charge by one (1) hour based on the custodian's failure to support that the Borough Administrator was required to identify redactions. However, the GRC determined that the remainder of the charge was reasonable because the Borough Administrator generated reports not kept in the course of regular business.

In this matter, the Custodian provided a response to questions posed by the GRC that reflect the analytical framework outlined in the Courier Post regarding the proper assessment of a special service charge. The Custodian argued that the proposed special service charge of \$606.80 was reasonable because salary rates per class do not exist in spreadsheet form. The Custodian stated that the process would take a total of fourteen (14) hours to compile and verify the responsive record, composed of seven (7) years of data for approximately 400 adjuncts (in-state and out-of-state). However, the Custodian did note that all responsive information was in data storage.

The Complainant objected to this charge, first noting that his request only sought six (6) years of data. Additionally, the Complainant argued that the estimated number of adjuncts is misleading, given that at no time in the last ten (10) years did OCC employ more than 72 adjuncts. However, it is unclear whether the Complainant's assertion was based on a "per year" calculation or represented a total number of adjuncts over that period. Moreover, the Complainant asserted that responsive information is included in Excel format and should be easy to sort out and cut and paste into a new spreadsheet. Finally, the Complainant contended that the Custodian did not adequately support the salaries for both employees.

A review of the 14-point analysis and the parties' arguments reveals the following:

- The actual time frame is within a five and a half (5 ½) year period and not seven (7) years.
- The GRC cannot confirm the actual number of adjuncts included within the respective time frame but notes that the Complainant's OPRA request only sought out-of-state adjuncts. This would likely decrease the number the adjuncts included on the list. The

GRC is also aware that the Custodian can produce such a record as she did so already on August 6, 2013: that list did not include names and salary per class rates. Thus, it is likely that the only requirement would be to include the missing information in that list.

- The Custodian confirmed that all responsive information is stored electronically; thus, compilation of a responsive list would not constitute “creation” of a new record. *See Zahler v. Ocean Cnty. Coll.*, GRC Complaint No. 2013-266 (Interim Order dated July 29, 2014).

Based on the forgoing, the GRC is not satisfied that the total special service charge is reasonable and warranted. Instead, OCC is entitled to charge a lesser fee. The Custodian has charged a total of fourteen (14) hours to compile additional personnel information (names and salary per class rates) maintained electronically and essentially add it to a list she already disclosed to the Complainant on August 6, 2013. The GRC is not satisfied that such an action will take the amount of time estimated. Additionally, the Custodian failed to include adequate detail in her 14-point analysis supporting that manually compiling data into one (1) comprehensive list constitutes estimated 14 hours. For these reasons, the GRC believes that half the amount of time charged for each individual is reasonable and warranted; to wit, the Custodian shall charge a total of \$348.04 (seven (7) hours at \$45.00 and one (1) hour at \$33.04).

Accordingly, although the Custodian has proved that a special service charge is warranted here, the Custodian may only charge for half the time spent by both Sally Crawford and Lee Manning to compile and prepare the requested record. Specifically, the evidence does not support that the proposed fee represents the actual time and effort required to prepare and disclose the record. *See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Courier Post*, 360 *N.J. Super.* at 199, 204; *Rivera*, GRC 2009-311. *See also Palkowitz*, GRC 2014-302. Thus, the Custodian is obligated to provide access to the responsive out-of-state adjunct list containing all requested information once the Complainant has remitted payment of \$348.04 for same. *See Paff v. City of Plainfield*, GRC Complaint No. 2006-54 (July 2006).

### **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*.

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

opinions, recommendations, or advice about agency policies. Id. at 286 (internal citations and quotations omitted).

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

OPRA also provides that the definition of a government record shall not include “information generated by or on behalf of public employers or public employees in connection . . . with any grievance filed by or against an individual; or in connection with collective negotiations, including documents and statements of strategy or negotiating position.” N.J.S.A. 47:1A-1.1.

Moreover, OPRA provides that its provisions “shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute . . . promulgated under the authority of any statute or Executive Order of the Governor . . .” N.J.S.A. 47:1A-9(a).

To the extent that the Open Public Meetings Act (“OPMA”) provides exemptions to the disclosure of government records, those exemptions are recognized by OPRA. Id. More specifically, OPMA provides that:

A public body may exclude the public only from that portion of a meeting at which the public body discusses . . .

...

(4) Any collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body

...

(7) pending or anticipated litigation or contract negotiation other than in subsection b.(4) herein in which the public body is, or may become, a party, or matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer;

(8) Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion or disciplining of any specific prospective public officer or

employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.

N.J.S.A. 10:4-12(b).

Finally, OPRA provides that:

[P]ersonnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, *except that*: an individual's name, title, position, salary, payroll record, length of service, *date of separation and the reason therefor*, and the amount and type of any pension received *shall be a government record . . .*

N.J.S.A. 47:1A-10 (emphasis added).

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

<b>Record No.</b>	<b>Record Name/Date</b>	<b>Description of Redaction</b>	<b>Custodian's Explanation/ Citation for Redactions</b>	<b>Findings of the <i>In Camera</i> Examination<sup>8</sup></b>
1.	Caucus meeting minutes dated January 30, 2012	Negotiation matters and grievance/litigation (Joseph Reilly)(3 matters).	Negotiations: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(4)</u> .  Grievance and litigation matters: <u>N.J.S.A. 10:4-12.7(b)(7)</u> .	The first (1 <sup>st</sup> ) and third (3 <sup>rd</sup> ) redacted paragraphs fall within the cited exemptions, as both deal with litigation as a result of negotiations and litigation as a result of personnel issues. Thus, the Custodian lawfully denied access to these redacted paragraphs. <u>N.J.S.A. 47:1A-6</u> .

<sup>8</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.

				<p>However, the second (2<sup>nd</sup>) redacted paragraph does not contain similar information; thus, same is not exempt. Specifically, the sentence references a “fact-finding” session with no additional context.</p> <p><b>Thus, the Custodian unlawfully denied access to the second (2<sup>nd</sup>) paragraph and must disclose same.</b></p>
2.	Caucus meeting minutes dated March 5, 2012	Personnel (Fulvio Cesco-Cancian), grievances and negotiation (3 matters).	<p>Personnel information: <u>N.J.S.A. 47:1A-10</u>; <u>N.J.S.A. 10:4-12.7(b)(8)</u>.</p> <p>Negotiations: <u>N.J.S.A. 47:1A-1.1</u>; <u>N.J.S.A. 10:4-12.7(b)(4)</u>.</p> <p>Grievance matters: <u>N.J.S.A. 10:4-12.7(b)(7)</u>.</p>	<p>All three (3) redacted paragraphs fall within the cited exemptions. Specifically, the first (1<sup>st</sup>) redacted paragraph refers to a staff disciplinary matter. The second redacted paragraph refers to litigation initiated against OCC. The third (3<sup>rd</sup>) redacted paragraph refers to negotiations. Thus, the Custodian lawfully denied access to the redacted paragraphs. <u>N.J.S.A. 47:1A-6</u>.</p>
3.	Caucus meeting minutes dated March 9, 2012	Personnel (Joseph Cicero), advisory, consultative or deliberative (“ACD”)/litigation (2 matters).	<p>Personnel information: <u>N.J.S.A. 47:1A-10</u>; <u>N.J.S.A. 10:4-12.7(b)(8)</u>.</p> <p>ACD material and litigation matters: <u>N.J.S.A. 47:1A-1.1</u>; <u>N.J.S.A. 10:4-12.7(b)(7)</u>.</p>	<p>Both paragraphs fall within the cited exemptions. Specifically, the first (1<sup>st</sup>) redacted paragraph refers to a staff disciplinary matter. The second (2<sup>nd</sup>) paragraph speaks to a litigation matter and the OCC’s handling of an OPRA request based on same. Thus, the Custodian lawfully denied access to these paragraphs. <u>N.J.S.A. 47:1A-6</u>.</p>

4.	Caucus meeting minutes dated March 26, 2012	ACD/litigation (Joseph Reilly and Deborah Robinson) and negotiation (5 matters).	ACD material and litigation matters: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(7)</u> .  Negotiations: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(4)</u> .	All four (4) redacted paragraphs fall within the cited exemptions. Specifically, the first (1 <sup>st</sup> ) paragraph relates to ongoing litigation with Mr. Reilly. The second (2 <sup>nd</sup> ) and third (3 <sup>rd</sup> ) paragraphs refer to negotiations with two (2) different employee unions and the Board's tactics toward same. The fourth (4 <sup>th</sup> ) paragraph relates to anticipating litigation and a grievance filing. Thus, the Custodian lawfully denied access to the redacted paragraphs. <u>N.J.S.A. 47:1A-6</u> .
5.	Caucus meeting minutes dated April 23, 2012	Negotiations (1 matter).	Negotiations: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(4)</u> .	The two (2) redacted paragraphs fall within the exemption cited because they refer to current negotiation matters with a union. Thus, the Custodian lawfully denied access to the redacted paragraphs. <u>N.J.S.A. 47:1A-6</u> .
6.	Caucus meeting minutes dated May 29, 2012	Personnel (David Bordelon) and negotiation (2 matters).	Personnel information: <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .  Negotiations: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(4)</u> .	The first (1 <sup>st</sup> ) redacted paragraph refers to a staff disciplinary issue the second (2 <sup>nd</sup> ) redacted paragraph refers to negotiations. Thus, the Custodian lawfully denied access to the redacted paragraphs. <u>N.J.S.A. 47:1A-6</u> .
7.	Caucus meeting minutes dated June 8, 2012	Grievance, ACD/litigation (Joseph Reilly, Maria Flynn and Kevin Kuhn) and negotiation (3 matters).	ACD material, litigation and grievance matters: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(7)</u> .  Negotiations: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A.</u>	The first (1 <sup>st</sup> ) redacted paragraph relates to a grievance filed by an employee association. The third (3 <sup>rd</sup> ) redacted paragraph relates to negotiations with another employee association. Thus, the Custodian



			10:4-12.7(b)(4).	<p>lawfully denied access to these redacted paragraphs. <u>N.J.S.A.</u> 47:1A-6.</p> <p>However, the second (2<sup>nd</sup>) redacted paragraph does not fall within the ACD/litigation exemption. Specifically, the entry provided that Mr. Sahradnik provided an update on current litigation with Mr. Reilly and Ms. Flynn, but provides no details. <b>Thus, the Custodian unlawfully denied access to the second (2<sup>nd</sup>) paragraph and must disclose same.</b></p>
8.	Caucus meeting minutes dated June 25, 2012	Negotiations (2 matters).	Negotiations: <u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 10:4-12.7(b)(4).	The two (2) redacted paragraphs fall within the cited exemption because they refer to current negotiation matters with employee associations. Thus, the Custodian lawfully denied access to the redacted paragraphs. <u>N.J.S.A.</u> 47:1A-6.
9.	Caucus meeting minutes dated July 23, 2012	ACD/litigation (Joseph Reilly), negotiations and grievance (3 matters).	<p>ACD material, litigation and grievance matters: <u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 10:4-12.7(b)(7).</p> <p>Negotiations: <u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 10:4-12.7(b)(4).</p>	All three (3) redacted paragraphs fall within the cited exemptions. Specifically, the first (1 <sup>st</sup> ) redacted paragraph, unlike the paragraph required to be disclosed in the June 8, 2012 minutes, included details on Mr. Reilly's litigation. The second (2 <sup>nd</sup> ) redacted paragraph relates to negotiations with another employee association. The third (3 <sup>rd</sup> ) redacted paragraph relates to a grievance filed by an employee association. Thus, the Custodian

				lawfully denied access to these redacted paragraphs. <u>N.J.S.A.</u> 47:1A-6.
10.	Caucus meeting minutes dated August 27, 2012	Personnel (Chris McFarland and Christopher Barnes), ACD/litigation, grievance and negotiation (5 matters).	Personnel information: <u>N.J.S.A.</u> 47:1A-10; <u>N.J.S.A.</u> 10:4-12.7(b)(8).  ACD material, litigation, grievance matters: <u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 10:4-12.7(b)(7).  Negotiations: <u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 10:4-12.7(b)(4).	A majority of the redacted paragraphs fall within the cited exemptions. Specifically, most of the first (1 <sup>st</sup> ) paragraph relates to employee discipline actions. The second (2 <sup>nd</sup> ) paragraph relates to a grievance filed by an employee association and the OCC's resulting actions. The third (3 <sup>rd</sup> ) paragraph relates to negotiations with an employee association. Thus, the Custodian lawfully denied access to these redacted paragraphs. <u>N.J.S.A.</u> 47:1A-6.  However, the second (2 <sup>nd</sup> ) redacted bullet point in the first (1 <sup>st</sup> ) redacted paragraph (from "The" to "Administrator") relates to Mr. McFarland's "date of separation and reason therefor." This information is expressly disclosable under <u>N.J.S.A.</u> 47:1A-10. <b>Thus, the Custodian unlawfully denied this portion of the paragraph and must disclose same.</b>
11.	Caucus meeting minutes dated September 14, 2012	ACD/personnel (Kevin Kuhn and Fulvio Cesco-Cancian) and grievance/litigation (5 matters).	Personnel information: <u>N.J.S.A.</u> 47:1A-10; <u>N.J.S.A.</u> 10:4-12.7(b)(8).  ACD material, grievance and litigation matters: <u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 10:4-	A majority of the redacted paragraphs fall within the cited exemptions. Specifically, the first (1 <sup>st</sup> ) redacted paragraphs are ACD because they relate to a proposed agreement. Additionally, the portion of the first (1 <sup>st</sup> ) bullet point beginning "following"

			12.7(b)(7).	<p>through to the period relates to a disciplinary action. The second (2<sup>nd</sup>), third (3<sup>rd</sup>), and fourth (4<sup>th</sup>) redacted bullet points related to grievances, personnel matters, and ongoing litigation with Mr. Reilly.</p> <p>However, the first half of the first (1<sup>st</sup>) redacted bullet point (from “The” to “Member”) relates to Mr. Kuhn’s “date of separation and reason therefor.” This information is expressly disclosable under <u>N.J.S.A. 47:1A-10</u>. <b>Thus, the Custodian unlawfully denied this portion of the bullet point and must disclose same.</b></p>
12.	Caucus meeting minutes dated September 24, 2012	ACD/litigation (Maria Flynn), personnel (Fulvio Cescocancian) and grievance (6 matters).	<p>ACD material, grievance and litigation matters: <u>N.J.S.A. 47:1A-1.1</u>; <u>N.J.S.A. 10:4-12.7(b)(7)</u>.</p> <p>Personnel information: <u>N.J.S.A. 47:1A-10</u>; <u>N.J.S.A. 10:4-12.7(b)(8)</u>.</p>	<p>Certain portions of the redacted paragraphs fall within the cited exemptions. Specifically, the second (2<sup>nd</sup>) redacted paragraph relates to ongoing litigation with Ms. Flynn and includes certain details. The third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) paragraphs relate to a grievance filed by an employee association and actions considered by the OCC based on advice of counsel.</p> <p>However, the first (1<sup>st</sup>) redacted paragraph does not fall within the ACD/litigation exemption because it generally provides that Mr. Sahradnik began providing a report of pending</p>

				litigation to the OCC. Additionally, the bullet point relates to Mr. Cesco-Cancian’s “date of separation and reason therefor.” This information is expressly disclosable under <u>N.J.S.A. 47:1A-10</u> . <b>Thus, the Custodian unlawfully denied these redactions and must disclose same.</b>
13.	Caucus meeting minutes dated November 19, 2012	Personnel (Gloria Villalobos) and ACD/litigation (Deborah Robinson, Kathy Baranowski, Maria Flynn and Joseph Reilly)(2 matters).	Personnel information: <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .  ACD material, grievance and litigation matters: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(7)</u> .	The first (1 <sup>st</sup> ) redacted paragraph refers to a staff disciplinary issue and falls within the exemption cited. The Custodian lawfully denied access to this paragraph. <u>N.J.S.A. 47:1A-6</u> .  However, the second (2 <sup>nd</sup> ) redacted paragraph does not fall within the exemptions cited. Specifically, the paragraph does not contain any opinions, recommendations, or deliberations and does not discuss the substance of any of the litigation matters to which Mr. Sahradnik provide a status update. <b>Thus, the Custodian unlawfully denied access to the second (2<sup>nd</sup>) redacted paragraph and must disclose same.</b>
14.	Caucus meeting minutes dated December 14, 2012	Personnel (Gloria Villalobos and Chris McFarland)(1 matter).	Personnel information: <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .	The redacted paragraph refers to personnel issues (contract non-renewals). However, the last two (2) sentences of the paragraph provide that Ms. Villolobos waived her right

				to privacy. Based on a plain reading of OPMA, the exemption no longer applies because Ms. Villolobos waived her privacy rights. <u>N.J.S.A. 10:4-12(b)(8)</u> . <b>Thus, the Custodian unlawfully denied access to the last two (2) sentences of the paragraph and must disclose same.</b>
15.	Caucus meeting minutes dated January 25, 2013	Negotiations and ACD/litigation (Joseph Reilly and Maria Flynn)(3 matters).	Negotiations: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(4)</u> .  ACD material and litigation matters: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(7)</u> .	All three (3) redacted paragraphs fall within the cited exemptions. Specifically, the first (1 <sup>st</sup> ) redacted paragraph refers to negotiations with employees associations. The second (2 <sup>nd</sup> ) paragraph relates to ongoing litigation with Mr. Reilly. The third (3 <sup>rd</sup> ) paragraph relates to ongoing litigation with Ms. Flynn. Thus, the Custodian lawfully denied access to the redacted paragraphs. <u>N.J.S.A. 47:1A-6</u> .
16.	Caucus meeting minutes dated January 28, 2013	ACD/litigation (Maria Flynn, Joseph Reilly, Karen Bosley and Deborah Robinson)(3 matters).	ACD material and litigation matters: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(7)</u> .	The first (1 <sup>st</sup> ) paragraph is exempt under the ACD exemption because same provides recommendations and deliberations of hiring practices. The second (2 <sup>nd</sup> ) paragraph relates to ongoing litigation with Ms. Flynn. Thus, the Custodian lawfully denied access to the redacted paragraphs. <u>N.J.S.A. 47:1A-6</u> .  However, the third (3 <sup>rd</sup> ) redacted paragraph does not fall within the exemptions cited. Specifically, the paragraph

				only provides that Mr. Sahradnik gave the Board a status update on litigation without any further details. <b>Thus, the Custodian unlawfully denied access to the third (3<sup>rd</sup>) redacted paragraph and must disclose same.</b>
17.	Caucus meeting minutes dated February 25, 2013	Negotiations (1 matter).	Negotiations: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(4)</u> .	The redacted paragraph refers to negotiations with employees associations. Thus, the Custodian lawfully denied access to the redacted paragraphs. <u>N.J.S.A. 47:1A-6</u> .
18.	Caucus meeting minutes dated March 8, 2013	ACD material (1 matter).	ACD material: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(7)</u> .	The redacted paragraph is exempt under the ACD exemption because same provides recommendations and deliberations of Board policy. Thus, the Custodian lawfully denied access to this paragraph. <u>N.J.S.A. 47:1A-6</u> .
19.	Caucus meeting minutes dated March 22, 2013	Negotiations (1 matter).	Negotiations: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(4)</u> .	The redacted paragraph refers to negotiations with employees associations. Thus, the Custodian lawfully denied access to the redacted paragraph. <u>N.J.S.A. 47:1A-6</u> .
20.	Caucus meeting minutes dated April 22, 2013	Personnel, negotiations and ACD material (3 matters).	Negotiations: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(4)</u> .  ACD material: <u>N.J.S.A. 47:1A-1.1</u> ; <u>N.J.S.A. 10:4-12.7(b)(7)</u> .  Personnel information: <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .	All three (3) redacted paragraphs fall within the cited exemptions. Specifically, the first (1 <sup>st</sup> ) redacted paragraph refers to a staff disciplinary issue and falls within the exemption cited. The second (2 <sup>nd</sup> ) redacted paragraph refers to negotiations with employees associations. The third (3 <sup>rd</sup> ) paragraph is exempt under the ACD exemption because same

				provides opinions about the Board's options for fiscal action. Thus, the Custodian lawfully denied access to these paragraphs. <u>N.J.S.A. 47:1A-6.</u>
21.	Caucus meeting minutes dated May 28, 2013	Grievance, ACD/litigation (David Bordelon) and negotiations (5 matters).	Negotiations: <u>N.J.S.A. 47:1A-1.1; N.J.S.A. 10:4-12.7(b)(4).</u>  ACD material, litigation and grievance matters: <u>N.J.S.A. 47:1A-1.1; N.J.S.A. 10:4-12.7(b)(7).</u>	A majority of the redacted paragraphs fall within the cited exemptions. The first (1 <sup>st</sup> ) paragraph refers to a grievance filed against OCC by an employee association. The second (2 <sup>nd</sup> ) paragraph addresses anticipated litigation based on an employee association fundraiser. The third (3 <sup>rd</sup> ) and fourth (4 <sup>th</sup> ) redacted paragraphs refer to negotiations with employee associations. These paragraphs fall within the exemptions cited. Thus, the Custodian lawfully denied access to same.  However, the fifth (5 <sup>th</sup> ) redacted paragraph does not fall within the ACD exemption because it does not contain any opinions, recommendations, or deliberations. Specifically, it summarizes a court decision in very general terms. <b>Thus, the Custodian unlawfully denied access to the fifth (5<sup>th</sup>) redacted paragraph and must disclose same.</b>
22.	Caucus meeting minutes dated June 7, 2013	Negotiations (1 matter).	Negotiations: <u>N.J.S.A. 47:1A-1.1; N.J.S.A. 10:4-12.7(b)(4).</u>	The redacted paragraph refers to negotiations with employees associations. Thus, the Custodian lawfully denied access to the redacted paragraph.

				<u>N.J.S.A.</u> 47:1A-6.
23.	Caucus meeting minutes dated June 24, 2013	Negotiations, grievance and ACD material (3 matters).	Negotiations: <u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 10:4-12.7(b)(4).  ACD material and grievance matters: <u>N.J.S.A.</u> 47:1A-1.1; <u>N.J.S.A.</u> 10:4-12.7(b)(7).	All three (3) redacted paragraphs fall within the cited exemptions. Specifically, the first (1 <sup>st</sup> ) redacted paragraph refers to negotiations with employees associations. The second (2 <sup>nd</sup> ) redacted paragraph refers to a grievance filed against OCC by an employee association. The third (3 <sup>rd</sup> ) redacted paragraph is exempt under the ACD exemption because same provides opinions about the Board's options for an E-Learning program. Thus, the Custodian lawfully denied access to the redacted paragraphs. <u>N.J.S.A.</u> 47:1A-6.
1.	Personnel Agenda dated March, 5, 2012	Page 4: Disciplinary action (Fulvio Cesco-Cancian).  *Note: Page 5 not redacted (marker bled through page)	Personnel information: <u>N.J.S.A.</u> 47:1A-10; <u>N.J.S.A.</u> 10:4-12.7(b)(8).	The redacted paragraph on page 4 relates to an employee disciplinary action. Thus, the Custodian lawfully denied access to the redacted paragraph. <u>N.J.S.A.</u> 47:1A-6.
2.	Personnel Agenda dated April 23, 2012	Page 3: Disciplinary action (Joann Sullivan).	Personnel information: <u>N.J.S.A.</u> 47:1A-10; <u>N.J.S.A.</u> 10:4-12.7(b)(8).	The redacted paragraph on page 4 relates to an employee disciplinary action. Thus, the Custodian lawfully denied access to the redacted paragraph. <u>N.J.S.A.</u> 47:1A-6.
3.	Personnel Agenda dated May 29, 2012	Page 4: Disciplinary action (Ivan Lugo).  Page 7:	Personnel information: <u>N.J.S.A.</u> 47:1A-10; <u>N.J.S.A.</u> 10:4-12.7(b)(8).	The first (1 <sup>st</sup> ) sentence and in the redacted paragraph on page 4 relates to an employee disciplinary action. Additionally, the recommended annual



		<p>Recommended annual salary increase calculations.</p> <p>*Note: Pages 5 and 6 not redacted (marker bled through page).</p>		<p>salary increase calculations on page 7 fall within the OPMA personnel exemption.</p> <p>Thus, the Custodian lawfully denied access to these portions of the redacted paragraphs. <u>N.J.S.A. 47:1A-6.</u></p> <p>However, the second (2<sup>nd</sup>) sentence in the redacted paragraph on page 4 relates to Mr. Lugo’s “date of separation and reason therefor.” This information; to wit, the date of termination is expressly disclosable under <u>N.J.S.A. 47:1A-10.</u> <b>Thus, the Custodian unlawfully denied to the redacted disclosable personnel information contained within the redacted paragraph and must disclose same.</b></p>
4.	Personnel Agenda dated July 23, 2012	<p>Page 3: Disciplinary action (Christopher Barnes).</p> <p>Page 4: Current and proposed salary</p> <p>Page 5: Disciplinary action (Randi Rice)</p>	Personnel information: <u>N.J.S.A. 47:1A-10;</u> <u>N.J.S.A. 10:4-12.7(b)(8).</u>	<p>The redacted paragraphs on pages 3 and 5 directly relate to employee disciplinary actions. Additionally, the proposed salary falls within the OPMA personnel exemption. Thus, the Custodian lawfully denied access to these redacted entries. <u>N.J.S.A. 47:1A-6.</u></p> <p>However, the current salary figure on page 4 is expressly disclosable under <u>N.J.S.A. 47:1A-10.</u> Additionally, the redacted paragraph on page 4 relates to Ms. Rice’s “date of separation and reason</p>

				therefor.” This information; to wit, the date of termination is expressly disclosable under <u>N.J.S.A. 47:1A-10</u> . <b>Thus, the Custodian unlawfully denied to the redacted disclosable personnel information contained within the redacted paragraph and must disclose same.</b>
5.	Personnel Agenda dated August 27, 2012	<p>Page 5: Disciplinary action (Chris McFarland).</p> <p>Page 7: Disciplinary action (Arlene Parker).</p> <p>*Note: Page 6 not redacted (marker bled through page).</p>	Personnel information: <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .	<p>The redacted paragraph on page 5 directly relates to employee disciplinary actions. Thus, the Custodian lawfully denied access to the redacted paragraph. <u>N.J.S.A. 47:1A-6</u>.</p> <p>However, portions of the redacted paragraph on page 7 relates to Ms. Parker’s “date of separation and reason therefor.” This information; to wit, the date of termination and prior employment dates with OCC, is expressly disclosable under <u>N.J.S.A. 47:1A-10</u>. <b>Thus, the Custodian unlawfully denied to the redacted disclosable personnel information contained within the redacted paragraph and must disclose same.</b></p>
6.	Personnel Agenda dated November 19, 2012	<p>Page 5: Disciplinary action (Gloria Villalobos).</p> <p>Page 7: Disciplinary settlement</p>	Personnel information: <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .	<p>The redacted paragraph on page 5 directly relates to employee disciplinary actions. Thus, the Custodian lawfully denied access to the redacted paragraph. <u>N.J.S.A. 47:1A-6</u>.</p>

		(Laurie Culbreth).		<p>However, the redacted paragraph on page 7 relates to Ms. Culbreth’s “date of separation and reason therefor.” This information is expressly disclosable under <u>N.J.S.A. 47:1A-10</u>. <b>Thus, the Custodian unlawfully denied access to the redacted paragraph and must disclose same.</b></p>
7.	Personnel Agenda dated December 14, 2012	<p>Pages 4 and 5: Disciplinary action (Garrett Vanness), Non-renewal of contracts (Chris McFarland, Gloria Villalobos and Melissa Cipolletti).</p> <p>Page 5: Disciplinary resignation/separation (Ronald Murphy).</p>	Personnel information: <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .	<p>The redacted paragraphs on pages 4 and 5 relate to employee disciplinary actions and non-renewals. Thus, the Custodian lawfully denied access to the redacted paragraph. <u>N.J.S.A. 47:1A-6</u>.</p> <p>However, the redacted paragraph on page 5 relates to Mr. Murphy’s “date of separation and reason therefor.” This information is expressly disclosable under <u>N.J.S.A. 47:1A-10</u>. <b>Thus, the Custodian unlawfully denied access to the redacted paragraph and must disclose same.</b></p>
8.	Personnel Agenda dated February 25, 2013	Page 4: Current and proposed salaries.	Personnel information: <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .	<p>The proposed salaries for all five (5) employees falls within the OPMA personnel exemption. Thus, the Custodian lawfully denied access to these redacted entries. <u>N.J.S.A. 47:1A-6</u>.</p> <p>However, the current salary figures are expressly disclosable under <u>N.J.S.A. 47:1A-10</u>. <b>Thus, the</b></p>

				<b>Custodian unlawfully denied access to the current salary and must disclose same</b>
9.	Personnel Agenda dated April 22, 2013	<p>Page 5: Severance/Separation agreement (Rose Landwehrle-Diaz), current and proposed salaries, Non-renewal of contracts (Lawrence Young)<sup>9</sup></p> <p>Page 6: Recommended annual salary increase calculations.</p> <p>*Pages 4 and 6 not redacted (marker bled through page).</p>	Personnel information: <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .	<p>The proposed salary and non-renewal information on page 5 falls within the OPMA personnel exemption. Additionally, the recommended annual salary increase calculations on page 6 fall within the OPMA personnel exemption.</p> <p>However, the redacted paragraph on page 5 relates to Ms. Landwehrle-Diaz’s “date of separation and reason therefor.” This information is expressly disclosable under <u>N.J.S.A. 47:1A-10</u>. Moreover, the current salary figure on page 5 are also expressly disclosable under <u>N.J.S.A. 47:1A-10</u>. <b>Thus, the Custodian unlawfully denied access to the redacted information and must disclose same.</b></p>
10.	Personnel Agenda dated May 28, 2013	<p>Page 4: Termination (Chris McFarland)</p> <p>Page 5: Separation agreement (Calvert Gearon).</p>	Personnel information: <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .	The redacted paragraph on page 4 relates to Mr. McFarland’s “date of separation and reason therefor.” Moreover, the redacted paragraph on page 5 contains information regarding Mr. Gearon’s “length of service, date of separation and reason therefor.” This information is expressly disclosable under <u>N.J.S.A. 47:1A-10</u> .

<sup>9</sup> The GRC notes that the Custodian identified in the document index that she redacted item No. 7 on this page; however, this appears in error as the records provided for an *in camera* review did not include such an extension.  
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				<b>Thus, the Custodian unlawfully denied access to the redacted information and must disclose same.</b>
11.	Personnel Agenda dated June 24, 2013	Pages 6 and 7: Current and proposed salaries.	Personnel information: <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .	<p>The proposed salaries for all five (5) employees falls within the OPMA personnel exemption. Thus, the Custodian lawfully denied access to these redacted entries. <u>N.J.S.A. 47:1A-6</u>.</p> <p>However, the current salary figures are expressly disclosable under <u>N.J.S.A. 47:1A-10</u>. <b>Thus, the Custodian unlawfully denied access to the current salary and must disclose same</b></p>
1.	Personnel Agenda dated March 9, 2012	Termination for cause (Joseph Cicero).	Personnel matters. <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .	<p>The first (1<sup>st</sup>) half of the redacted paragraph (from “Recommend” to “March 8, 2012” relates to an employee disciplinary action. For this portion of the paragraph, the Custodian lawfully denied access to same.</p> <p>However, the second (2<sup>nd</sup>) half of the paragraph (from “and termination” to “Sergeant I”) relates to the “date of separation and reason therefor.” This information is expressly disclosable under <u>N.J.S.A. 47:1A-10</u>. <b>Thus, the Custodian unlawfully denied this portion of the paragraph and must disclose same.</b></p>

2.	Personnel Agenda from September 14, 2012	Disciplinary action (Laura Wagner).	Personnel matters. <u>N.J.S.A. 47:1A-10</u> ; <u>N.J.S.A. 10:4-12.7(b)(8)</u> .	The redacted paragraph relates to an employee disciplinary action (as noted in the header). Thus, the Custodian lawfully denied access to the redacted paragraph. <u>N.J.S.A. 47:1A-6</u> .
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**Knowing & Willful**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

**Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not fully comply with the Council’s July 29, 2014 Interim Order because she failed to provide the second certification within the ten (10) business days required. However, the Custodian did timely provide the proposed special service charge to the Complainant and further timely submitted her first (1<sup>st</sup>) certification of compliance to the Executive Director. Additionally, the Custodian provided the required *in camera* records, legal certification, and simultaneous certification of compliance with the extended time frame to comply.
2. Although the Custodian has proved that a special service charge is warranted here, the Custodian may only charge for half the time spent by both Sally Crawford and Lee Manning to compile and prepare the requested record. Specifically, the evidence does not support that the proposed fee represents the actual time and effort required to prepare and disclose the record. *See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); The Courier Post v. Lenape Reg’l High Sch.*, 360 N.J. Super. 191, 199 (Law Div. 2002); *Rivera v. Rutgers, The State Univ. of NJ*, GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012). *See also Palkowitz v. Borough of Hasbrouck Heights (Bergen)*, GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015). Thus, the Custodian is obligated to provide access to the responsive out-of-state adjunct list containing all requested information once the Complainant has remitted payment of \$348.04 for same. *See Paff v. City of Plainfield*, GRC Complaint No. 2006-54 (July 2006).
3. **The Complainant shall, within five (5) business days from receipt of the Council’s Interim Order, deliver to the Custodian (a) a payment in the amount of \$348.04, or (b) a statement declining to purchase the records. Should the Complainant accept and pay the appropriate special service charge, the Custodian shall disclose the responsive records within three (3) business days from receipt of payment. The Complainant’s failure to take any action within**

**the five (5) business day period shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5(b) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within ten (10) business days from receipt of the Council's Interim Order the Custodian shall provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4,<sup>10</sup> to the Executive Director with respect to the Complainant's willingness or refusal to purchase the requested records and whether same were disclosed.**

4. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.<sup>11</sup>**
5. 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: Frank F. Caruso  
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover  
Executive Director

November 10, 2015

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<sup>10</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."

<sup>11</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

INTERIM ORDER

July 29, 2014 Government Records Council Meeting

Michael Zahler  
Complainant

Complaint No. 2013-266

v.

Ocean County College  
Custodian of Record

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

1. The Custodian’s written response was legally insufficient because the Custodian failed to respond to each item contained in the Complainant’s August 8, 2013 clarified/amended OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). *See also* Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Further, because the Custodian failed to provide a specific lawful basis for redactions made to the requested minutes and reports, the Custodian’s response to the Complainant’s clarified/amended OPRA request is insufficient. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008). Finally, the Custodian’s response was equally insufficient because she failed to provide a date certain on which she would respond to the Complainant’s clarified/amended request. Hardwick v. NJ Dep’t of Transp., GRC Complaint No. 2007-164 (February 2008).
2. The Custodian unlawfully denied access to the responsive list containing all elements identified in the Complainant’s initial and clarified/amended OPRA requests. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to support that the information omitted from the lists provided to the Complainant did not exist within the electronic filing systems utilized by Ocean County College. Thus, the Custodian must: (1) disclose to the Complainant the responsive list containing all specifically identified information; or (2) if the Custodian believes a special service charge is warranted, complete a 14-point analysis and provide the Complainant with the estimated cost to provide the responsive records.
3. **The Custodian shall comply with item No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, if necessary, including a detailed document index explaining the lawful basis for**





each redaction and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup> If applicable, the Custodian shall make the amount of the charge available to the Custodian within three (3) business days from receipt of the Council's Interim Order and provide certified confirmation within the five (5) business days. Thereafter, if the Complainant accepts payment, the Custodian shall disclose to the Complainant the requested records with any appropriate redactions, if necessary, and a detailed document index explaining the lawful basis for any such redaction upon remittance of the special service charge, within ten (10) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4, to the Executive Director at that time. If a special service charge is applicable and the Complainant fails to pay the special service charge for the requested records by the tenth (10<sup>th</sup>) business day from receipt of the Council's Interim Order, the Custodian shall provide a certification to that effect in accordance with N.J. Court Rule 1:4-4 to the Executive Director at that time.

4. The Custodian did not unlawfully deny access to records for clarified/amended request Item No. 3 and the portion of clarified/amended request Item No. 4A, because said request items do not contain all necessary criterion to be considered valid requests for correspondence. Thus, said items are overly broad and invalid. *See* MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011).
5. Because the Custodian herein requested in writing clarification of the Complainant's clarified/amended OPRA request No. 4, and because the Complainant failed to provide such clarification, the Custodian has borne her burden of proving a lawful denial of access to the requested records under N.J.S.A. 47:1A-6. Herron v. NJ Dep't of Educ., GRC Complaint No. 2011-363(December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005); Markarian v. NJ Dep't of Law & Pub. Safety, Div. of Consumer Affairs, GRC Complaint No. 2011-312 (Interim Order dated March 22, 2013).
6. Pursuant to Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the responsive minutes to determine the validity of the Custodian's assertion that the redacted excerpts constitute personnel matters exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); N.J.S.A. 10:4-12. Further, as part of the Custodian's compliance, she must certify to whether the missing minutes alleged to have been withheld exist and, if so, why same were not provided.

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<sup>1</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."

<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

7. **The Custodian must deliver<sup>3</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 6 above), nine (9) copies of the redacted records, a document or redaction index<sup>4</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>5</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
8. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 29<sup>th</sup> Day of July, 2014

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: July 30, 2014**

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

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

<sup>5</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Michael Zahler<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-266**

v.

**Ocean County College<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:

1. All agreements between Ocean County College (“OCC”) and China for partnership.
2. Vendor reports for all payments and receipts for OCC/China partnership.
3. Bill list for all expenses for travel to China for discussion of OCC/China partnership.
4. Agreement between OCC and Pierson (sic) for student/faculty leads.
5. Vendor reports showing payment to Pierson (sic) for student faculty leads.
6. Classes taught by all out-of-state adjunct faculty between September 2007 and May 2013 to include number of students per class, salary paid for each class taught.

**Custodian of Record:** Sara Winchester

**Request Received by Custodian:** July 30, 2013

**Response Made by Custodian:** August 6, 2013

**GRC Complaint Received:** September 10, 2013

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

**Request and Response:**

On July 29, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 31, 2013, Mr. Hatem Akl, Chief Information Officer, forwarded the request to information Technology (“IT”) for a record responsive to item No. 6. On August 1, 2013, Mr. Akl provided the Custodian with an example of a faculty report for her review. The Custodian advised that the report would work, but that the estimated rate for each class should be excluded. Mr. Akl noted that the Complainant was seeking “salary paid” and that it will be a major programming effort to produce. Mr. Akl further asked the Custodian to confirm that the report should only include the “State,” “Term,”

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

<sup>2</sup> Represented by Matthew B. Thompson, Esq., of Berry, Sahradnik, Kotzas & Benson (Toms River, NJ).

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

“Section Name,” “Title” and “Census Enrollment” columns. The Custodian confirmed that the report as shown in Mr. Akl’s e-mail not including faculty name or class rate would be sufficient.

On August 6, 2013, the Custodian responded in writing advising that no records responsive to item Nos. 1 through 5 exist. The Custodian further stated that attached was a report responsive to item No. 6 with redactions for adjunct personal identifying information. The Custodian noted that the salary paid for each class is not part of the existing record. The Custodian stated that a valid OPRA request seeks identifiable government records and not information. The Custodian stated that a custodian is also not required to conduct research or create a new record; thus, the salary paid for each class is not included.

On the same day, the Complainant acknowledged receipt of the Custodian’s response and expressed concern over the chain of e-mails between the Custodian and Mr. Akl. Specifically, the Complainant stated that the Custodian instructed Mr. Akl to not include faculty names and salary and that she would advise the Complainant that no records exist. The Complainant requested that the Custodian provide the missing names and salaries as requested. The Complainant also renewed his other request items and included the following:

[R]ecords including all e-mails, faxes, letters, plane ticket receipts, hotel and meal expenses regarding [OCC’s] partnership with China and the records including e-mails, faxes and letters concerning Pierson’s (sic) agreement with [OCC] in terms of adjuncts and/or students recruited for distance learning classes.

On August 7, 2013, the Custodian stated that OPRA required protection of personal identifying information such as the excluded names and addresses of faculty members. The Custodian further stated that the salaries are available only by performing work to obtain the data; however, she is only required to disclose existing records. The Custodian stated that she is not required to perform programing, compile new reports or reconcile data. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 550 (App. Div. 2005).

On August 8, 2013, the Complainant disputed that OPRA allows an employee’s name to fall under the personal privacy interest. The Complainant stated that the Custodian is required to produce salary information regardless of the programming necessary to do so, which he doubts actually needs to be done. The Complainant further stated that according to June 8, 2012 Board of Trustee minutes, the Custodian personally discussed an OCC contract with “Pearson.” The Complainant noted that notwithstanding his misspelling of Pearson, the Custodian was obligated to determine what he sought or seek clarification. The Complainant noted that the minutes also included a discussion of a Memorandum of Understanding (“MOU”) under the heading “OCC/China Partnership” and that the 2006 Spring/Summer “In the News” reported that Jon Larson, President, took a trip to China in 2001 and signed a MOU. The Complainant contended that records clearly must exist. The Complainant further provided clarification of his original OPRA request as follows:

1. A list of all adjuncts who have taught or are teaching distance-learning classes between January 1, 2007 and present to include Fall 2013 and all summer classes in excel format

listing name, class taught, semester, number of students enrolled and salary paid for each class.

2. A copy of the MOU signed by President Larson in 2001 as well as any MOU between any OCC official or representative and any official in China concerning any actual or proposed “partnership” between OCC and any institution, media or government agency in China from 2001 to present.
3. Copies of all correspondence including e-mails, faxes letters and memoranda concerning the OCC/China partnership between 2000 and present.
4. Copies of all bills paid on behalf of or reimbursed to President Larson or other OCC official or representative for travel to China and any other country outside the US between 2000 and present. These are to include but are not limited to airfare, meals transportation and/or hotels. If anyone not employed by OCC was similarly reimbursed for travel to another country, those bills are requested as well.
5. A copy of the contract with Pearson referenced in the June 8, 2012 minutes and copies of any other contract with Pearson authorized and referred to in the same meeting.
6. A copy of the review referenced in the June 8, 2012 minutes concerning outcomes and records indicating the market outreach program being undertaken by Pearson, including goals of the campaign, procedural execution and objectives for tracking short-term success and long-term growth.
7. Copies of vendor reports showing amounts paid to Pearson in accordance with the contracts between January 1, 2007 and present.

The Complainant further amended his OPRA request to include the following new items:

- 1A. Executive session minutes from January 2012 to present.
- 2A. Personnel reports adopted by the Board of Trustees from January 2012 to present.
- 3A. Bill lists approved for payment by the Board of Trustees from January 2012 to present.
- 4A. Board authorization creating new policy prohibiting adjuncts from working more than three (3) days a week and any memoranda, faxes or e-mails in which the new policy was discussed.

On August 15, 2013, the Custodian responded advising that she was in the process of compiling responsive records. The Custodian noted that some of the records were in storage and would take time to obtain. The Custodian further responded to a portion of the Complainant’s OPRA request as follows:

1. OCC does not maintain a record that satisfies all parts of the request item and is only required to disclose the most comprehensive record available. Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (Interim Order dated February 27, 2008). OPRA further requires that a custodian must provide a government record in the medium requested or other meaningful medium if the record is not maintained in that medium. N.J.S.A. 47:1A-5(d). It is clear that the information sought is not contained in a single record, but a list of courses and names of instructors will be provided.
4. OCC will provide records for President Larson’s travel, but the remainder of the request for other OCC officials or representatives is overly broad and requires clarification of the specific persons referred to in the OPRA request item.

6. The review conducted on Pearson's marking outreach was verbally conducted, but all Pearson contracts will be provided.
  7. All Pearson contracts will be provided.
- 3A. OCC does not approve bill lists for payment. This request item requires clarification.
  - 4A. There is no policy in place prohibiting adjuncts from working more than three (3) days a week and thus no records exist. Further, any responsive memoranda, faxes or e-mails regarding this issue are exempt as "inter-agency, intra-agency advisory, consultative or deliberative" ("ACD") material because the records are pre-decisional and generated prior to the Board of Trustees' decision or adoption of the policy.

On August 16, 2013, on behalf of the Custodian, Ms. Elise Barocas sent multiple e-mails to the Complainant attached records responsive to the Complainant's August 8, 2013 clarified/amended request item Nos. 4, 5, 6, and 7.

#### Denial of Access Complaint:

On September 10, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant disputed multiple aspects of the Custodian's response to his initial July 29, 2013 OPRA request and subsequent clarification/amendment to same on August 8, 2013. The Complainant contended that the Custodian is in a unique position at OCC allowing her to have intimate knowledge of the programs or areas from which records were sought.

#### July 29, 2013 OPRA request

The Complainant contended that the Custodian unlawfully denied access to the first five (5) items advising that no records existed. The Complainant contended that the Custodian unlawfully denied access to records that were maintained by OCC at the time of his OPRA request. The Complainant argued that the Custodian had intimate knowledge of the China partnership and Pearson agreements because of her position as Chief Financial Officer ("CFO") and Vice President ("VP") of Finance and Administration. Further, the Complainant noted that the Custodian had an obligation to seek clarification if it appeared the Complainant misspelled Pearson in his request.

The Complainant argued that the Custodian unlawfully denied access to item No. 6 by providing a partially responsive record. The Complainant contended that the Custodian unlawfully denied access to adjunct names and addresses. The Complainant also disputed the Custodian's denial of salaries based on e-mails between herself and Mr. Akl in which the Custodian clearly acknowledged that salaries existed but would require programming. The Complainant argued that programming is required under OPRA but that the Custodian may charge a special service charge for extensive use of technology. N.J.S.A. 47:1A-5(c). The Complainant asserted that this provision does not allow a Custodian to respond that no records exist.

### August 8, 2013 Clarification/Amendment

Regarding item No. 1, the Complainant disputed that the Custodian failed a second time to provide a responsive list of distance learning classes complete with salary per class. The Complainant further noted that this list was a complete list of staff with no differentiation of full time and adjunct staff. The Complainant contended that the Custodian's failure to cull adjuncts from this list results in a denial of access to his request.

Regarding item Nos. 2 and 3, the Complainant argued that the Custodian failed to response to these requests.

Regarding item No. 4, the Complainant contended that he only received airfare vouchers for President Larson and two (2) individuals in 2012 and no other records. The Complainant argued that OCC's retention schedule requires them to maintain a travel folder of all records of payments for travel related expenses. The Complainant further noted that his request sought specific records (bills) for a specific time frame (2000 to present). The Complainant finally disputed the Custodian's request for clarification of specific persons for whom the Complainant sought travel records.

Regarding item No. 6, the Complainant argued that he received no minutes discussing the Board of Trustees' review of Pearson's marketing outreach plan.

Regarding item Nos. 1A and 2A, the Complainant asserted that the Custodian failed to respond, thus, these request items are "deemed" denied. Regarding item No. 3A, the Complainant disputed the Custodian's request for clarification. The Complainant did not include an argument for item No. 4A.

The Complainant requested the following relief:

1. A determination that his OPRA requests were valid.
2. A determination that the Custodian had full knowledge of the existence of responsive records based on her position as CFO and VP.
3. A determination that the Custodian unlawfully denied access to records in part or whole thus violating OPRA.
4. A determination ordering disclosure of all responsive records without redactions.
5. A determination that the Custodian knowingly and willfully violated OPRA under the totality of the circumstances warranting an assessment of the civil penalty. N.J.S.A. 47:1A-11.

### Supplemental Submissions

On September 11, 2013, the Custodian responded the Complainant's August 8, 2013 clarified/amended OPRA request item Nos. 1A and 2A providing caucus minutes, with redactions, and personnel reports for 2012 and 2013.

### Amended Denial of Access Complaint

On September 12, 2013, the Complainant filed an Amended Denial of Access Complaint with the GRC. The Complainant states that the Custodian e-mailed him on September 11, 2013, providing executive session minutes and personnel resolutions responsive to item Nos. 1A and 2A. The Complainant argued that the Custodian failed to provide eleven (11) personnel reports for May 9, 2012, September 14, 2012 and January through June 2013.

The Complainant further noted that the Custodian redacted (or attempted to redact) six (6) of the personnel reports. The Complainant argued that the Board of Trustee's open session minutes reflect approval of personnel reports and that the reports became public records subject to access without redactions at that time. The Complainant contended that the Custodian should be required to either identify the lawful basis for her redactions or provide the records without redactions.

Finally, the Complainant argued that the Custodian's latest response further exacerbated that she is knowingly and willfully violating OPRA. The Complainant further requested the GRC award him compensation for filing this action.<sup>4</sup>

### Statement of Information:

On October 23, 2013, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on July 31, 2013<sup>5</sup> and received his clarification and amended request on August 8, 2013.

#### July 29, 2013 OPRA request item No. 1

The Custodian certified that she responded on August 6, 2013, advising that no agreement between OCC and China existed. The Custodian affirmed that she has been with OCC since 2003 and was unaware of any agreement between OCC and China. The Custodian affirmed that on August 8, 2013, the Complainant clarified his request to seek MOUs signed by President Larson in 2001 and other MOUs concerning actual or proposed partnerships (August 8, 2013 item No. 2). The Custodian certified that she was unaware that any MOUs existed and her assistant alerted her to the existence of executed MOUs that were never implemented upon the assistant's return from long-term leave. The Custodian certified that same are being provided as part of the SOI.

#### July 29, 2013 OPRA request item No. 2

The Custodian certified that she initially responded on August 6, 2013, advising that no

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<sup>4</sup> The only type of compensation available under OPRA is for prevailing party attorney's fees. N.J.S.A. 47:1A-6. However, the GRC notes that fees are not at issue in complaints where a complainant does have legal representation. Barkley v. Essex County Prosecutor's Office, GRC Complaint No. 2012-34 (May 2013). The GRC further notes that it has no authority to order any other type of compensatory damages. Reid v. NJ Dep't of Corrections, GRC Complaint No. 2010-83 (Final Decision dated May 24, 2011).

<sup>5</sup> Although the Custodian certified that she received the Complainant's OPRA request on July 31, 2013, she later certified that she inquired with Mr. Akl about fulfilling the request on July 30, 2013.



vendor reports for an OCC partnership with China existed. The Custodian affirmed that she has reviewed OCC's files and determined that in fact no records exist.

July 29, 2013 OPRA request item No. 3

The Custodian affirmed that she initially responded on August 6, 2013 advising that no bill list for travel to China existed. The Custodian certified that on August 8, 2013, the Complainant provided clarification (August 8, 2013 item No. 4). The Custodian certified that on August 15, 2013, she sought clarification of "other OCC officials or representatives" and provided the Complainant the following concerning President Larson's travel via e-mail:

- Check No. 150041.
- Check No. 150797.
- Check No. 152818.
- E-Check No. 0000318.

July 29, 2013 OPRA request item No. 4

The Custodian certifies that she initially responded on August 6, 2013 advising that no Pearson agreements for "student/faculty" leads existed. The Custodian certified that on August 8, 2013, the Complainant provided additional clarification (August 8, 2013 item No. 5). The Custodian affirmed that on August 16, 2013, she provided the following to the Complainant via e-mail:

- March 28, 2011 resolution.
- Contract from March 31, 2011 ending March 30, 2016.
- Marketing contract from July 1, 2012 ending June 30, 2013.

July 29, 2013 OPRA request item No. 5

The Custodian certifies that she initially responded on August 6, 2013 advising that no Pearson vendor reports existed. The Custodian certified that on August 8, 2013, the Complainant provided additional clarification (August 8, 2013 item No. 7). The Custodian affirmed that on August 16, 2013, she provided 197 pages of Pearson invoices to the Complainant via e-mail.

July 29, 2013 OPRA request item No. 6

The Custodian certified she began discussions for fulfilling this request with Mr. Akl on July 30, 2013. The Custodian certified that Mr. Akl informed her that OCC did not maintain any one document or program matching the information the Complainant sought for adjunct teachers; rather, the information was in several different programs. The Custodian affirmed that OCC would have needed to manually extract the responsive information and create a new record. The Custodian affirmed that the process would have included OCC personnel inputting information line by line. The Custodian certified that although she believed the request item was an invalid request seeking information, on August 6, 2013, she provided the Complainant class schedules being taught by out-of-state adjuncts with the number of students per class.

The Custodian certified that on August 8, 2013, the Complainant clarified this request (August 8, 2013 item No. 1). The Custodian affirmed that OCC still would have needed to create a new record, this time in Excel spreadsheet, to capture all the information sought by the Complainant. The Custodian certified that in an effort to satisfy the request, she disclosed to the Complainant via e-mail several hundred pages of spreadsheets containing adjunct names, classes, semester, enrollment per class and amount of credits for each course on August 19, 2013. The Custodian certified that the amount of credits per class would allow the Complainant to calculate salaries.

Additionally, the Custodian argued that the Complainant's request and subsequent clarification were invalid as requests for information. *See Gorbe v. Monroe Fire Dist. No. 3 (Middlesex)*, GRC Complaint No. 2010-138 (December 2010). The Custodian contended that although she provided records in response to both requests in good faith, the Complainant ultimately sought the creation of a record. Specifically, the Custodian would be required to input all responsive information into an Excel® spreadsheet.

August 8, 2013 clarified/amended request item No. 3

The Custodian argued that this request item seeking correspondence (to include e-mails, faxes, letters and memoranda) regarding the OCC/China partnership from 2000 to the present date was overly broad because it failed to identify specific records, dates, names, *etc.* *See Elcavage v. West Milford Twp. (Passaic)*, GRC Complaint No. 2009-07 (April 2010); *Verry v. Borough of South Bound Brook (Somerset)*, GRC Complaint No. 2009-124 (April 2010); *Pizzuto v. Borough of Oradell (Bergen)*, GRC Complaint No. 2011-91 (September 2012).

August 8, 2013 clarified/amended request item No. 6

The Custodian certified that the review referenced in the June 8, 2012 minutes was verbal. The Custodian certified that the records she provided to the Complainant on August 16, 2013 in response to his August 8, 2013 clarified/amended OPRA request item No. 5 were also responsive to this request item.

August 8, 2013 clarified/amended request item No. 1A and 2A

The Custodian certified that she responded via e-mail on September 11, 2013 providing caucus minutes from January 2012 to June 2013, with redactions pursuant to N.J.S.A. 47:1A-9(a) and N.J.S.A. 10:4-12 (which excludes the public from discussions of personnel matters). Further, the Custodian certified that she responded via e-mail on September 11, 2013 providing personnel reports from January 2012 to June 2013.

August 8, 2013 clarified/amended request item No. 3A and 4A

The Custodian certified that she sought clarification of item No. 3A advising that OCC did not approve bill lists for payment. Further, the Custodian certified that no policy responsive to item No. 4A existed because same did not exist. The Custodian also denied access to any memoranda, faxes or e-mails regarding any discussion of the policy as ACD material.

Finally, the Custodian asserted that her actions did not rise to the level of a knowing and willful violation of OPRA. The Custodian contended that records responsive to many of the requested items did not exist and she made a good faith effort to respond to the Complainant's request items seeking records over a 12-year period. Further, the Custodian asserted that her initial denial to the MOU responsive to the Complainant's July 29, 2013 OPRA request item No. 1 was reasonable.

#### Additional Submissions:

On October 25, 2013, the Complainant contended that, after reviewing the SOI, there appeared to be an issue with the minutes and reports he received differing from those submitted to the GRC as part of the SOI. The Complainant contended that the e-mail he received did not include the redacted caucus minutes, which he would have disputed in the Amended Denial of Access Complaint had he received.<sup>6</sup>

### Analysis

#### Sufficiency of Response

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. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that “. . . [t]he Custodian's response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).” See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Further, OPRA provides that “[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5(g). OPRA requires that, when providing access to redacted records, a custodian shall provide a specific lawful basis for redactions. In Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008), the custodian responded in a timely manner providing redacted records to the complainant; however, the custodian failed to provide a specific legal basis for said redactions. The Council held that “[t]he Custodian's response was legally insufficient under OPRA because he failed to provide a written response setting forth a detailed and lawful basis for each redaction . . .” Id. at 4. The Council further held that “. . . the Custodian violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and has not borne his burden of proving the denial of access to the redacted portions was authorized by law. . .” Id. at 5. See Schwarz v. NJ Dep't of Human Serv., GRC Complaint No. 2004-60 (February, 2005)(setting forth the proposition that specific citations to the law that allows a denial of access are required at the time of the denial); Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010)(noting that N.J.S.A. 47:1A-5(g) requires a custodian of record to indicate the specific basis for noncompliance).

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<sup>6</sup> The Complainant sent a second (2<sup>nd</sup>) e-mail to the GRC; however, it is unclear how his statements there are relevant to the instant complaint. Additionally, the Complainant did not submit additional correspondence confirming which of the statements related to this complaint.

Additionally, OPRA provides that a custodian may have an extension of time to respond to a complainant's OPRA request, but the custodian must provide a date certain. N.J.S.A. 47:1A-5(i). OPRA further provides that should the custodian fail to provide a response on that specific date, "access shall be deemed denied." N.J.S.A. 47:1A-5(i). In Hardwick v. NJ Dep't of Transp., GRC Complaint No. 2007-164 (February 2008), the custodian provided the complainant with a written response to the complainant's OPRA request. In the response, the custodian requested an extension of time to respond to said request but failed to provide a date certain upon which the requested records would be provided. The Council held that the custodian's request for an extension of time was inadequate under OPRA pursuant to N.J.S.A. 47:1A-5(i).

Here, the Custodian responded in writing to the Complainant's August 8, 2013 clarified/amended OPRA request in a timely manner. However, the Custodian failed to respond to each request item individually. Specifically, the Custodian failed to respond to request item Nos. 2, 3, 1A and 2A when responding to the clarified/amended request on August 15, and 16, 2013. Additionally, the Custodian provided minutes and personnel reports responsive to 1A and 2A on September 11, 2013; however, the Custodian failed to cite a specific lawful basis for the redactions contained therein. Finally, although the Custodian advised the Complainant that she was compiling records and that certain records responsive to the clarified/amended request were in storage, she failed to provide a date certain on which she would respond.

As such, the Custodian's written response was legally insufficient because the Custodian failed to respond to each item contained in the Complainant's August 8, 2013 clarified/amended OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff, GRC 2007-272. *See also* Lenchitz, 2012-265. Further, because the Custodian failed to provide a specific lawful basis for redactions made to the requested minutes and reports, the Custodian's response to the Complainant's clarified/amended OPRA request is insufficient. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-209. Finally, the Custodian's response was equally insufficient because she failed to provide a date certain on which she would respond to the Complainant's clarified/amended request. Hardwick, GRC 2007-164.

### **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.

#### **July 29, 2013 OPRA request item No. 6/ August 8, 2013 clarified/amended request item No. 1**

OPRA specifically provides that certain personnel information to include name and salary are subject to access under OPRA. N.J.S.A. 47:1A-10; Valdes v. Union City Board of Education (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Marinaccio v. Borough of Fanwood (Union), GRC Complaint No. 2012-174 (Interim Order dated July 23, 2013).

With respect to compiling information from multiple records, in Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008), the Council considered a request for several types of investigatory records and, though it found criminal history reports to be exempt from disclosure, it determined that arrest reports can be obtained under OPRA. Notwithstanding N.J.S.A. 47:1A-1.1, the Council noted, certain information with respect to a crime must be disclosed pursuant to N.J.S.A. 47:1A-3(b), which deals with ongoing investigations:

Although specific arrest information must be disclosed, the Custodian *is under no duty to extract and synthesize such information from government records* in order to comply with the provisions of OPRA. The Superior Court made this clear in [MAG] . . . Accordingly, pursuant to OPRA, this information must be disclosed in the form of a *government record*. The most comprehensive government record containing information subject to disclosure pursuant to N.J.S.A. 47:1A-3(b) is the police arrest report, alternatively referred to as a uniform arrest report.

Morgano, GRC 2007-156 (citations omitted)(emphasis added).

Moreover, in Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009), the complainant sought a demotion list to include several categories of information. The custodian certified in the SOI that HR's computer system could only produce a demotion list that omitted information sought because the system did not maintain same. Based on the forgoing, the Council held that ". . . the Custodian was under no obligation to create a list compatible to the Complainant's OPRA request because OPRA does not require a Custodian to produce new documents in response to an OPRA request pursuant to MAG, *supra* and NJ Builders, *supra*." Id. at 6. The Council reasoned that ". . . the evidence of record . . . shows that information that the Complainant argues was not provided . . . has never been maintained as part of the actual record released to the Complainant." Id.

In response to the Complainant's initial request for a class list for out-of-state adjuncts including salary paid, the Custodian provided a list that did not include salary or adjunct faculty name. However, in e-mails between the Custodian and Mr. Akl, the Custodian directed Mr. Akl to not include the estimated rate for each class. Mr. Akl also advised that producing salary paid would be a major programming effort. The Complainant disputed the missing information and raised concerns about the e-mails between the Custodian and Mr. Akl.

Thereafter, the Complainant renewed his request to include the upcoming Fall 2013, semester.<sup>7</sup> The Custodian responded providing the Complainant with a full excel spreadsheet for all instructors and noted that she was not required to create a record in order to satisfy the Complainant's exact request. Morgano, GRC 2007-156. The Custodian reiterated this argument in the SOI.

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<sup>7</sup> The GRC notes that OPRA does not contemplate on-going requests for records. Paff v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012)(*citing* Blau v. Union Cnty., GRC Complaint No. 2003-75 (January 2005)). Thus, any records coming into existence after submission of the amended OPRA request are not required to be provided.

The GRC first notes that by definition, “information stored or maintained electronically” is considered a government record for purposes of OPRA. N.J.S.A. 47:1A-1.1. Here, the evidence of record contradicts the Custodian’s arguments that “creation” of a record in the traditional sense is necessary. Specifically, it is clear from the e-mail chain between the Custodian and Mr. Akl that salary can be included in the list. The facts here are different from the facts in Matthews, GRC 2008-123, because the evidence here supports the conclusion that the information exists and can be incorporated into a list. Further, the possibility of technological manipulation is not a valid reason to deny access to the requested personnel information. This is especially true considering that OPRA addresses situations in which manipulation or programming of information technology could result in a special service charge. N.J.S.A. 47:1A-5(d); Wolosky v. Twp. of Sparta (Sussex), GRC Complaint No. 2008-277 (Interim Order dated November 18, 2009); Latz v. Twp. of Barnegat (Ocean), GRC Complaint Nos. 2012-241 & 2012-242 (Interim Order dated August 27, 2013).

Additionally, the Council’s holding in Morgano, does not necessarily apply to electronic records (*i.e.* databases or spreadsheets). The Morgano, decision refers to compiling certain disclosable information from a paper record and listing or creating another paper record responsive to a request. However, in terms of certain electronic filing systems, general querying of information cannot be viewed as equal to creating a new paper record. While information stored electronically may include additional pieces of information/fields, many programs have the capability to extract requested information/fields for disclosure. Requiring a custodian to run such a query is not unreasonable, as most programs such as Microsoft Office® programs provide streamlined capabilities for performing such actions. Further, querying electronic file systems for responsive information is not unlike searching an e-mail account for e-mails responsive to an OPRA request.

Therefore, the Custodian unlawfully denied access to the responsive list containing all elements identified in the Complainant’s initial and clarified/amended OPRA requests. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to support that the information omitted from the lists provided to the Complainant did not exist within the electronic filing systems utilized by OCC. Thus, the Custodian must: (1) disclose to the Complainant the responsive list containing all specifically identified information; or (2) if the Custodian believes a special service charge is warranted, complete a 14-point analysis and provide the Complainant with the estimated cost to provide the responsive records.

#### August 8, 2013 clarified/amended request Item No. 3 and 4A

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.”* N.J.S.A. 47:1A-1.

MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

Id. at 549 (emphasis added).

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency's files.” Id. at 549 (emphasis added). Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>8</sup> N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Moreover, the test under MAG is whether a requested record is a specifically identifiable government record. If it is, the record is disclosable barring any exemptions to disclosure contained in OPRA. The Council established criteria deemed necessary to specifically identify an e-mail communication in Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order March 28, 2007). In Sandoval, the complainant requested “e-mail ... between [two individuals] from April 1, 2005 through June 23, 2006 [using seventeen (17) different keywords].” The custodian denied the request, claiming that it was overly broad. The Council held that “[t]he Complainant in the complaint now before the GRC requested specific e-mails *by recipient, by date range and by content.* Based on that information, the Custodian has identified [numerous] e-mails which fit the specific recipient and date range criteria Complainant requested.” Id. at 16 (emphasis added).

In Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), the Council examined what constitutes a valid request for e-mails under OPRA. The Council determined that:

*In accord with MAG, supra, and its progeny, in order to specifically identify an e-mail, OPRA requests must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the*

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<sup>8</sup> Affirming Bent v. Stafford Police Dep't, GRC Case No. 2004-78 (October 2004).

*e-mails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof.*

Id. at 5 (emphasis in original).

The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011).

The facts in this case are controlled by the criteria set forth in Elcavage and Armenti. Here, the Complainant's clarified/amended request item No. 3 sought correspondence regarding the OCC/China partnership from 2000 to present. The request contained a subject and time frame; however, no senders or recipients are included. A similar flaw exists in the portion of clarified/amended request Item No. 4A. This request seeks correspondence and identified a subject (three (3) day or less work week for adjuncts), but fails to identify senders or recipients. This portion additionally omits a viable time frame.

Therefore, the Custodian did not unlawfully deny access to records for clarified/amended request Item No. 3 and the portion of clarified/amended request Item No. 4A, because said request items do not contain all necessary criterion to be considered valid requests for correspondence. Thus, said items are overly broad and invalid. See MAG, 375 N.J. Super. at 534; Elcavage, GRC 2009-07; Armenti, GRC 2009-154.

#### August 8, 2013 clarified/amended request item No. 4

In Herron v. NJ Dep't of Educ., GRC Complaint No. 2011-363(December 2012), the Council determined that the custodian bore her burden of proving a lawful denial of access to the requested records because she sought clarification of the complainant's request and the complainant provided no clarification. See Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005); Markarian v. NJ Dep't of Law & Pub. Safety, Div. of Consumer Affairs, GRC Complaint No. 2011-312 (Interim Order dated March 22, 2013).

The evidence of record indicates that the Custodian requested clarification in writing of this request item on August 15, 2013. Further, the evidence discloses that the Complainant failed to provide clarification of this request. In the Denial of Access Complaint, the Complainant disputed that clarification for the term "other OCC official or representative" was necessary. However, the Custodian reasonably sought clarification of individuals that may have been reimbursed for travel by OCC over a 13-year period.

Therefore, because the Custodian herein requested in writing clarification of the Complainant's clarified/amended OPRA request No. 4, and because the Complainant failed to provide such clarification, the Custodian has borne her burden of proving a lawful denial of access to the requested records under N.J.S.A. 47:1A-6. Herron, GRC 2011-363; Moore, GRC 2011-312; Markarian, GRC 2011-312.



August 8, 2013 clarified/amended request item Nos. 1A and 2A

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 Council<sup>9</sup> dismissing the complaint by 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 also 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.

In this matter, the Custodian provided the Complainant copies of redacted caucus minutes. Further, the record indicates that the Custodian redacted, or at least attempted to redact, some portions of the personnel reports provided. Specifically, some of the minutes provided to the GRC in the Complainant's Denial of Access complaint contained evidence of redactions; yet, the material underneath was highly visible anyway. However, in the SOI, the Custodian asserted that the redactions were for personnel matters. N.J.S.A. 47:1A-9(a); N.J.S.A. 10:4-12. Moreover, the Complainant submitted as part of his amended Denial of Access a list of meetings for which eleven (11) sets of minutes were not provided.

Therefore, pursuant to Paff, 379 N.J. Super. at 346, the GRC must conduct an *in camera* review of the responsive minutes to determine the validity of the Custodian's assertion that the redacted excerpts constitute personnel matters exempt from disclosure under OPRA. N.J.S.A.

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<sup>9</sup> Paff v. NJ Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

47:1A-9(a); N.J.S.A. 10:4-12. Further, as part of the Custodian's compliance, she must certify to whether the missing minutes alleged to have been withheld exist and, if so, why same were not provided.

### **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's written response was legally insufficient because the Custodian failed to respond to each item contained in the Complainant's August 8, 2013 clarified/amended OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i); Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). *See also* Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Further, because the Custodian failed to provide a specific lawful basis for redactions made to the requested minutes and reports, the Custodian's response to the Complainant's clarified/amended OPRA request is insufficient. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008). Finally, the Custodian's response was equally insufficient because she failed to provide a date certain on which she would respond to the Complainant's clarified/amended request. Hardwick v. NJ Dep't of Transp., GRC Complaint No. 2007-164 (February 2008).
2. The Custodian unlawfully denied access to the responsive list containing all elements identified in the Complainant's initial and clarified/amended OPRA requests. N.J.S.A. 47:1A-6. Specifically, the Custodian failed to support that the information omitted from the lists provided to the Complainant did not exist within the electronic filing systems utilized by Ocean County College. Thus, the Custodian must: (1) disclose to the Complainant the responsive list containing all specifically identified information; or (2) if the Custodian believes a special service charge is warranted, complete a 14-point analysis and provide the Complainant with the estimated cost to provide the responsive records.
3. **The Custodian shall comply with item No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, if necessary, including a detailed document index explaining the lawful basis for each redaction and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>10</sup> to the Executive Director.<sup>11</sup> If**

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<sup>10</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."

applicable, the Custodian shall make the amount of the charge available to the Custodian within three (3) business days from receipt of the Council's Interim Order and provide certified confirmation within the five (5) business days. Thereafter, if the Complainant accepts payment, the Custodian shall disclose to the Complainant the requested records with any appropriate redactions, if necessary, and a detailed document index explaining the lawful basis for any such redaction upon remittance of the special service charge, within ten (10) business days from receipt of the Council's Interim Order and simultaneously provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4, to the Executive Director at that time. If a special service charge is applicable and the Complainant fails to pay the special service charge for the requested records by the tenth (10<sup>th</sup>) business day from receipt of the Council's Interim Order, the Custodian shall provide a certification to that effect in accordance with N.J. Court Rule 1:4-4 to the Executive Director at that time.

4. The Custodian did not unlawfully deny access to records for clarified/amended request Item No. 3 and the portion of clarified/amended request Item No. 4A, because said request items do not contain all necessary criterion to be considered valid requests for correspondence. Thus, said items are overly broad and invalid. *See* MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011).
5. Because the Custodian herein requested in writing clarification of the Complainant's clarified/amended OPRA request No. 4, and because the Complainant failed to provide such clarification, the Custodian has borne her burden of proving a lawful denial of access to the requested records under N.J.S.A. 47:1A-6. Herron v. NJ Dep't of Educ., GRC Complaint No. 2011-363(December 2012); Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005); Markarian v. NJ Dep't of Law & Pub. Safety, Div. of Consumer Affairs, GRC Complaint No. 2011-312 (Interim Order dated March 22, 2013).
6. Pursuant to Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the GRC must conduct an *in camera* review of the responsive minutes to determine the validity of the Custodian's assertion that the redacted excerpts constitute personnel matters exempt from disclosure under OPRA. N.J.S.A. 47:1A-9(a); N.J.S.A. 10:4-12. Further, as part of the Custodian's compliance, she must certify to whether the missing minutes alleged to have been withheld exist and, if so, why same were not provided.

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<sup>11</sup> Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

7. **The Custodian must deliver<sup>12</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 6 above), nine (9) copies of the redacted records, a document or redaction index<sup>13</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>14</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
8. 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: Frank F. Caruso  
Senior Case Manager

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

July 22, 2014

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<sup>12</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>13</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>14</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."