



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

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

Luis Rodriguez  
Complainant

Complaint No. 2013-306

v.

NJ Division of Law  
Custodian of Record

At the September 30, 2014 public meeting, the Government Records Council (“Council”) considered the September 23, 2014 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s July 29, 2014 Interim Order because she responded in the prescribed time frame providing all responsive records ordered for disclosure with the appropriate redactions and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the original Custodian unlawfully denied access to portions of the responsive e-mails, he lawfully denied access to the content of same. N.J.S.A. 47:1A-6; Rodriguez v. Kean Univ., GRC Complaint No. 2013-68 (October 2013). Additionally, the evidence of record does not indicate that the original Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original Custodian’s partial denial of access does not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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



Final Decision Rendered by the  
Government Records Council  
On The 30<sup>th</sup> Day of September, 2014

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: October 3, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Luis Rodriguez<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-306**

v.

**State of NJ Division of Law<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of any correspondence from Michael Tripodi, Esq., Counsel for Kean University (“Kean”) or his/her (the Deputy Attorney General (“DAG”) on that case which would be Melissa Dutton Schaffer) office regarding Mr. Tripodi’s request for recusal advice about a pending ethics investigation. The only portion of any responsive record sought is the portion showing Mr. Tripodi’s request for advice and the date on which he requested same.

**Custodian of Record:** Elise Goldblat<sup>3</sup>

**Request Received by Custodian:** May 20, 2013

**Response Made by Custodian:** May 29, 2013

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

**Background**

July 29, 2014 Council Meeting:

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

1. The Council reconsiders its Administrative Complaint Disposition pursuant to N.J.A.C. 5:105- 2.10(a) to fully adjudicate the issues the Complainant presented in his Denial of Access Complaint.
2. The original Custodian lawfully denied access to those discussions between Mr. Tripodi and the Attorney General’s Office contained in the requested records. N.J.S.A. 47:1A-6; Rodriguez v. Kean Univ., GRC Complaint No. 2013-68 (October 2013). *See also* Roundtree v. NJ Dep’t of State, Div. of Elections, GRC Complaint

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

<sup>2</sup> Represented by Deputy Attorney General Angela Velez.

<sup>3</sup> The original custodian of record was Robert Sanguinetti, who retired prior to the filing of this complaint.

No. 2011-266 (Interim Order dated November 19, 2013)(holding that an e-mail containing a request for advice fell under the attorney-client privilege exemption).

3. The original Custodian has unlawfully denied access to the factual pieces of information contained in the responsive correspondence Complainant (i.e. sender, recipients, date, time, subject, and salutations where applicable). See Paff v. NJ Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005); Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010). The Custodian must disclose all other portions of the requested correspondence to the Complainant.
4. **The Custodian shall comply with item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>4</sup> to the Executive Director.<sup>5</sup>**
5. The Council defers analysis of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the current Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On July 30, 2014, the Council distributed its Interim Order to all parties. On August 6, 2014, the Custodian responded to the Council's Interim Order. The Custodian certified that she provided to the Complainant, via e-mail, two (2) e-mails responsive to his request with redactions as detailed in the attached document index. The Custodian certified that the factual pieces of information were not redacted as required by the Council's Interim Order.

#### Analysis

#### Compliance

At its July 29, 2014 meeting, the Council ordered the Custodian to provide the Complainant with responsive e-mails redacting the discussions contained in the e-mails and disclosing the factual pieces of information. On July 30, 2014, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on August 6, 2014.

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<sup>4</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>5</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.

On August 6, 2014, the fifth (5<sup>th</sup>) business day after receipt of the Council's Order, the Custodian sent the Complainant all records required to be disclosed, with appropriate redactions, via e-mail. The Custodian also provided certified confirmation of compliance to the Executive Director.

Therefore, the Custodian complied with the Council's July 29, 2014 Interim Order because she responded in the prescribed time frame providing all responsive records ordered for disclosure with the appropriate redactions and simultaneously provided certified confirmation of compliance to the Executive Director.

### **Knowing & Willful**

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

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

Although the original Custodian unlawfully denied access to portions of the responsive e-mails, he lawfully denied access to the content of same. N.J.S.A. 47:1A-6; Rodriguez v. Kean Univ., GRC Complaint No. 2013-68 (October 2013). Additionally, the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original Custodian's partial denial of access do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's July 29, 2014 Interim Order because she responded in the prescribed time frame providing all responsive records ordered for disclosure with the appropriate redactions and simultaneously provided certified confirmation of compliance to the Executive Director.
  
2. Although the original Custodian unlawfully denied access to portions of the responsive e-mails, he lawfully denied access to the content of same. N.J.S.A. 47:1A-6; Rodriguez v. Kean Univ., GRC Complaint No. 2013-68 (October 2013). Additionally, the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original Custodian's partial denial of access does 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

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

September 23, 2014



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

INTERIM ORDER

July 29, 2014 Government Records Council Meeting

Luis Rodriguez  
Complainant

Complaint No. 2013-306

v.

NJ Division of Law  
Custodian of Record

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

1. The Council reconsiders its Administrative Complaint Disposition pursuant to N.J.A.C. 5:105- 2.10(a) to fully adjudicate the issues the Complainant presented in his Denial of Access Complaint.
2. The original Custodian lawfully denied access to those discussions between Mr. Tripodi and the Attorney General's Office contained in the requested records. N.J.S.A. 47:1A-6; Rodriguez v. Kean Univ., GRC Complaint No. 2013-68 (October 2013). *See also* Roundtree v. NJ Dep't of State, Div. of Elections, GRC Complaint No. 2011-266 (Interim Order dated November 19, 2013)(holding that an e-mail containing a request for advice fell under the attorney-client privilege exemption).
3. The original Custodian has unlawfully denied access to the factual pieces of information contained in the responsive correspondence Complainant (i.e. sender, recipients, date, time, subject, and salutations where applicable). *See* Paff v. NJ Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005); Ray v. Freedom Acad. Charter Sch. (Camden), GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010). The Custodian must disclose all other portions of the requested correspondence to the Complainant.
4. **The Custodian shall comply with item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**

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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."

5. The Council defers analysis of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the current 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>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**

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

**Luis Rodriguez<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2013-306**

v.

**State of NJ Division of Law<sup>2</sup>**  
**Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of any correspondence from Michael Tripodi, Esq., Counsel for Kean University (“Kean”) or his/her (the Deputy Attorney General (“DAG”) on that case which would be Melissa Dutton Schaffer) office regarding Mr. Tripodi’s request for recusal advice about a pending ethics investigation. The only portion of any responsive record sought is the portion showing Mr. Tripodi’s request for advice and the date on which he requested same.

**Custodian of Record:** Elise Goldblat<sup>3</sup>  
**Request Received by Custodian:** May 20, 2013  
**Response Made by Custodian:** May 29, 2013  
**GRC Complaint Received:** October 16, 2013

**Background**

**Request and Response**

On May 19, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the original Custodian seeking the above-mentioned records. On May 29, 2013, six (6) business days after receipt of the request, the original Custodian responded denying access to responsive records stating that the Division of Law (“DOL”) could not confirm nor deny that it received a request for legal advice because to do so would breach the attorney-client privilege. N.J.S.A. 47:1A-1.1.

**Denial of Access Complaint:**

On October 16, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contended that the original Custodian’s vague denial of access is contrary to OPRA and does not serve the public interest.

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

<sup>2</sup> Represented by Deputy Attorney General Angela Velez.

<sup>3</sup> The original custodian of record was Robert Sanguinetti, who retired prior to the filing of this complaint.

The Complainant asserted that the original Custodian should have indicated, at the very least, whether a responsive record existed; however, his response was formulated to shield even the existence of same. The Complainant asserted that the original Custodian denied the request under the attorney-client privilege exemption without linking it to the existence of an actual record and has thus violated OPRA.

#### Statement of Information:

On January 6, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that DOL received the Complainant’s OPRA request on May 19, 2013.<sup>4</sup> The Custodian stated that on May 21, 2013, the original Custodian conferred with DAGs responsible for advising Kean. The Custodian stated that on May 28, 2013, DAG Jennifer McGruther advised the original Custodian of the existence of records that were attorney-client privileged communications. The Custodian further certified that the original Custodian responded on May 29, 2013, denying access to the Complainant’s request noting that DOL’s acknowledgement of the existence of a responsive record would breach the attorney-client privilege.

The Custodian contended that on its face, the Complainant’s OPRA request seeks attorney-client privileged communications. The Custodian asserted that an agency seeking legal advice from DOL goes to the very heart of the exemption and thus the original Custodian lawfully denied access to same. The Custodian further argued that DOL should not be required to submit a Vaughn Index because it is clear that the only records sought are exempt under the attorney-client privilege. *See Paff v. Div. of Law*, 412 N.J. Super. 140, 161 (App. Div. 2010). The Custodian asserted that in *Rodriguez v. Kean Univ.*, GRC Complaint No. 2013-68 (October 2013), the Council held that the custodian lawfully denied access to communications similar to those sought herein under the attorney-client privilege. The Custodian asserted that the Council should similarly hold that the original Custodian lawfully denied access here.

#### Additional Submissions:

On January 11, 2014, the Complainant contended that his request sought only factual portions of the records (*i.e.* sender, recipients, date, time, subject if it is not privileged, and salutations where applicable). The Complainant asserted that the original Custodian unlawfully denied access to the responsive records because it is generally recognized that an entire document is not subject to attorney-client privilege. *See* Carl G. Roberts, *The Attorney-Client Privilege and the Amended Federal Discovery Rules*, Law Practice Today (December 2006).

On January 12, 2014, the Complainant further noted that notwithstanding his argument on the attorney-client privilege exemption, the original Custodian failed to attest to the existence of responsive records. The Complainant requested that the GRC contemplate the issue of a custodian’s failure to advise whether any records exist when initially responding to an OPRA request.

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<sup>4</sup> The GRC notes that May 19, 2013 was a Sunday.

### January 28, 2014 Council Meeting:

At its January 28, 2014 public meeting, the Council considered the January 21, 2014 Administrative Complaint Disposition (“AD”) and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said disposition. The Council, therefore, found that this complaint should be dismissed because the parties agreed to settle the complaint in mediation.

### Procedural History:

On January 28, 2014, the Council distributed its AD to all parties. On February 3, 2014, the Custodian’s Counsel contacted the GRC stating that the Council’s AD was a mistake given that the Custodian did not agree to mediate this complaint. The Complainant subsequently e-mailed the GRC agreeing with the Custodian’s Counsel.

On February 4, 2014, the GRC e-mailed both parties advising that the Council’s AD was in error and that this complaint will be reconsidered accordingly to adjudicate the issues as presented by the parties in the Denial of Access Complaint and SOI filings.

### Analysis

#### Reconsideration

Pursuant to N.J.A.C. 5:105-2.10(a), the Council, “at its own discretion, may reconsider any decision it renders.” Id. The GRC thus reconsiders this matter of its own volition in order to amend the Council’s January 28, 2014 Administrative Complaint Disposition.

At its January 28, 2014 public meeting, the Council considered the January 21, 2014, Administrative Complaint Disposition and all related documentation submitted by the parties. The Council voted unanimously to administratively dispose of this complaint on the grounds that the complaint was settled in mediation. However, this complaint was adjudicated in error as “Settled in Mediation” because the Custodian did not agree to mediate the complaint and the thus this complaint must be reconsidered for a determination on the lawfulness of the Custodian’s response.

Therefore, the Council reconsiders its Administrative Complaint Disposition pursuant to N.J.A.C. 5:105- 2.10(a) to fully adjudicate the issues the Complainant presented in his Denial of Access Complaint.

#### 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.

OPRA further provides that “[t]he terms [of a government record] shall not include inter-agency or intra-agency advisory, consultative, or deliberative material. A government record shall not include . . . any record within the attorney-client privilege.” N.J.S.A. 47:1A-1.1.

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

In Rodriguez, GRC 2013-68, the complainant sought “any and all written correspondence memorializing that conversation [between the University’s In-House Counsel and its representative at the Attorney General’s Office] (such as emails, letters or memoranda).” *Id.* The Council found that the request constituted “written legal advice rendered to a public entity by retained counsel.” *Id.* (*citing* Payton, 148 N.J. at 550-51; Paff, 412 N.J. Super. at 156; Grand Jury Subpoenas, 241 N.J. Super. at 28). The Council thus determined that such correspondence was exempt from disclosure as attorney-client privileged material. *Id.* (*citing* N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Paff, 412 N.J. Super. at 156; Meakem, GRC No. 2003-66).

In the current matter, the Complainant requested similar correspondence as in Rodriguez, but specified that he was only seeking enough information to confirm that a request for advice was sent and on what date. Subsequent to the SOI, the Complainant asserted that any factual elements not exempt as attorney-client privileged material should be disclosed to him.<sup>5</sup>

Regarding the actual content of the responsive records, the GRC is satisfied that same should be considered similarly to the Council’s previous findings in Rodriguez, GRC 2013-68. The discussions between Mr. Tripodi and the University’s representative at the Attorney General’s Office pertaining to legal advice in an employee ethics investigation are exempt from disclosure as attorney-client privileged material. *Id.*; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(b).

Thus, the original Custodian lawfully denied access to those discussions between Mr. Tripodi and the Attorney General’s Office contained in the requested records. N.J.S.A. 47:1A-6; Rodriguez, GRC 2013-68. *See also* Roundtree v. NJ Dep’t of State, Div. of Elections, GRC Complaint No. 2011-266 (Interim Order dated November 19, 2013)(holding that an e-mail containing a request for advice fell under the attorney-client privilege exemption).

However, consistent with the Council’s past decisions and N.J.S.A. 47:1A-5(g), if the custodian of a government record asserts that part of a particular record is exempt from public access pursuant to OPRA, the custodian must delete or excise from a copy of the record that

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<sup>5</sup> The Complainant also asked the GRC to address whether the Custodian’s response was lawful. However, because it is clear from the SOI that responsive records exist, the GRC declines to address this issue.

portion which the custodian asserts is exempt from access and must promptly permit access to the remainder of the record.

Here, it is clear that some correspondence exists that would likely include innocuous information such as dates, addresses, salutations, and so on. These pieces of factual information have routinely been disclosed by the GRC. *See Paff v. NJ Dep't of Labor, Bd. of Review*, GRC Complaint No. 2003-128 (October 2005); *Ray v. Freedom Acad. Charter Sch. (Camden)*, GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010). To this end, the Custodian should have disclosed the responsive correspondence with redactions for the non-exempt information and failed to do so.

Thus, the original Custodian has unlawfully denied access to the factual pieces of information contained in the responsive correspondence Complainant (i.e. sender, recipients, date, time, subject, and salutations where applicable). *See Paff*, GRC 2003-128; *Ray*, GRC 2009-185. The Custodian must disclose all other portions of the requested correspondence to the Complainant.

### **Knowing & Willful**

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

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Council reconsiders its Administrative Complaint Disposition pursuant to N.J.A.C. 5:105- 2.10(a) to fully adjudicate the issues the Complainant presented in his Denial of Access Complaint.
2. The original Custodian lawfully denied access to those discussions between Mr. Tripodi and the Attorney General's Office contained in the requested records. N.J.S.A. 47:1A-6; Rodriguez v. Kean Univ., GRC Complaint No. 2013-68 (October 2013). *See also Roundtree v. NJ Dep't of State, Div. of Elections*, GRC Complaint No. 2011-266 (Interim Order dated November 19, 2013)(holding that an e-mail containing a request for advice fell under the attorney-client privilege exemption).
3. The original Custodian has unlawfully denied access to the factual pieces of information contained in the responsive correspondence Complainant (i.e. sender, recipients, date, time, subject, and salutations where applicable). *See Paff v. NJ Dep't of Labor, Bd. of Review*, GRC Complaint No. 2003-128 (October 2005); *Ray v. Freedom Acad. Charter Sch. (Camden)*, GRC Complaint No. 2009-185 (Interim Order dated August 24, 2010). The Custodian must disclose all other portions of the requested correspondence to the Complainant.

4. **The Custodian shall comply with item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>6</sup> to the Executive Director.<sup>7</sup>**
5. The Council defers analysis of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the current 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>6</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>7</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.



**NEW JERSEY GOVERNMENT RECORDS COUNCIL**  
**Administrative Complaint Disposition – Complaint Settled in Mediation**

**Luis Rodriguez**  
**Complainant**

**GRC Complaint No. 2013-306**

v.

**State of NJ Division of Law**  
**Custodial Agency**

**Custodian of Record:** Robert Sanguinetti<sup>1</sup>  
**Request Received by Custodian:** May 21, 2013  
**GRC Complaint Received:** October 16, 2013

**Complaint Disposition:** The Complainant signed the Mediation Settlement Agreement on December 18, 2013. The Custodian signed the Mediation Settlement Agreement on December 20, 2013.

**Applicable OPRA Provision:** None.

**Effective Date of Disposition:** January 28, 2014

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

Date: January 21, 2014

**Distribution Date: January 28, 2014**

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<sup>1</sup> Represented by Deputy Attorney General Angela Velez