



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

Christopher Lotito
Complainant

Complaint Nos. 2013-66 and 2013-67

v.

NJ Department of Labor,
Division of Unemployment Insurance
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 he responded in the prescribed time frame providing all responsive records ordered for disclosure, with appropriate redactions, via e-mail and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to portions of a majority of the responsive records and failed to fully comply with the Council’s March 25, 2014 Interim Order. However, the Custodian also lawfully denied access to portions of those records and lawfully denied access to the Examiner’s handwritten notes, as same are considered inter-agency or intra-agency advisory, consultative or deliberative material. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g). Further, the Custodian timely complied with the Council’s July 29, 2014 Interim Order. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006.



Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

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

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: October 3, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

Christopher Lotito¹
Complainant
v.

Complaint Nos. 2013-66 and 2013-67²

**New Jersey Department of Labor,
Division of Unemployment Insurance³**
Custodial Agency

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

1. All records relating to the Complainant in Docket No. 347.059, i.e. the physical contents of the folder, as well as notes, data and transcripts collected by the claims examiners for adjudication purposes.
2. All records relating to the Complainant in Docket No. 408.907, i.e. the physical contents of the folder, as well as notes, data and transcripts collected by the claims examiners for adjudication purposes.

Custodian of Record: Greg Castellani
Request Received by Custodian: February 19, 2013
Response Made by Custodian: February 28, 2013
GRC Complaint Received: February 28, 2013

Background

July 29, 2014 Council Meeting:

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

1. The Custodian did not fully comply with the Council's March 25, 2014 Interim Order because although he provided nine (9) copies of the records requested for an *in camera* review and certified confirmation of compliance, he failed to do so within five (5) business days. Further, the Custodian failed to seek an extension of time until after the expiration of the compliance time frame.

¹ No legal representation listed on record.

² The GRC consolidated these complaints for adjudication because of the commonality of the parties and/or issues.

³ Represented by Deputy Attorney General Adam Verone.

2. The Custodian lawfully denied access to the information contained in the docket sheets/records regarding the Complainant and relevant employer/employee information on pages 1-2, 5-7 and 8-9 for Docket No. 347,059 and pages 2, 4, 6 and 8 for Docket No. 408,907. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g). However, the Custodian unlawfully denied access to the remainder of the records which cannot be identified as employer/employee information. Thus, the Custodian must disclose both records with redactions for the exempt information and provide the remainder to the Complainant via his preferred method of delivery.
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, 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 1:4-4,⁴ to the Executive Director.⁵**
4. Because the Examiner's notes are handwritten and memorialize a telephone conference between the parties in Docket No. 347,059, the notes are exempt as inter-agency or intra-agency advisory, consultative or deliberative material. O'Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534, 538 (App. Div. 2007); Sage v. Freehold Reg'l High Sch. Dist. (Monmouth), GRC Complaint No. 2010-108 (Final Decision dated November 29, 2011). The Custodian has therefore lawfully denied access to the notes. N.J.S.A. 47:1A-1.1.
5. The Custodian has unlawfully denied access to portions of the responsive representation questionnaires and must disclose same with redactions of employer/employee information to the Complainant via his preferred method of delivery. N.J.S.A. 43:21-11(g); N.J.S.A. 47:1A-6.
6. The Custodian has unlawfully denied access to portions of the responsive telephone hearing script and message sheets. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the records with redactions for exempted notes and information obtained from employers/employees to the Complainant via his preferred method of delivery (with the exception of pages 4 and 6, which are exempt from disclosure in whole as inter-agency or intra-agency advisory, consultative or deliberative material).
7. **The Custodian shall comply with item Nos. 5 and 6 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, to the Executive Director.**

⁴ "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 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.

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.

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 he provided all records ordered to be disclosed (with redactions) to the Complainant via e-mail on this date.

Analysis

Compliance

At its July 29, 2014 meeting, the Council ordered the Custodian to disclose records, with the appropriate redactions, in accordance with the Council's *in camera* review. On July 30, 2014, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on August 6, 2014

On August 6, 2014, the fifth (5th) business day after receipt of the Council's Order, the Custodian sent the Complainant all records required to be disclosed, with 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 he responded in the prescribed time frame providing all responsive records ordered for disclosure, with appropriate redactions, via e-mail 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)).

The Custodian unlawfully denied access to portions of a majority of the responsive records and failed to fully comply with the Council's March 25, 2014 Interim Order. However, the Custodian also lawfully denied access to portions of those records and lawfully denied access to the Examiner's handwritten notes, as same are considered inter-agency or intra-agency advisory, consultative or deliberative material. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g). Further, the Custodian timely complied with the Council's July 29, 2014 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions 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.

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 he responded in the prescribed time frame providing all responsive records ordered for disclosure, with appropriate redactions, via e-mail and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to portions of a majority of the responsive records and failed to fully comply with the Council's March 25, 2014 Interim Order. However, the Custodian also lawfully denied access to portions of those records and lawfully denied access to the Examiner's handwritten notes, as same are considered inter-agency or intra-agency advisory, consultative or deliberative material. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g). Further, the Custodian timely complied with the Council's July 29, 2014 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: 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 30, 2014 Government Records Council Meeting

Christopher Lotito
Complainant

Complaint Nos. 2013-66 and 2013-67

v.

NJ Department of Labor, Division of
Unemployment Insurance
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 did not fully comply with the Council's March 25, 2014 Interim Order because although he provided nine (9) copies of the records requested for an *in camera* review and certified confirmation of compliance, he failed to do so within five (5) business days. Further, the Custodian failed to seek an extension of time until after the expiration of the compliance time frame.
2. The Custodian lawfully denied access to the information contained in the docket sheets/records regarding the Complainant and relevant employer/employee information on pages 1-2, 5-7 and 8-9 for Docket No. 347,059 and pages 2, 4, 6 and 8 for Docket No. 408,907. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g). However, the Custodian unlawfully denied access to the remainder of the records which cannot be identified as employer/employee information. Thus, the Custodian must disclose both records with redactions for the exempt information and provide the remainder to the Complainant via his preferred method of delivery.
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, 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 1:4-4,¹ to the Executive Director.²**
4. Because the Examiner's notes are handwritten and memorialize a telephone conference between the parties in Docket No. 347,059, the notes are exempt as inter-agency or intra-

¹ "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."

² 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.

agency advisory, consultative or deliberative material. O'Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534, 538 (App. Div. 2007); Sage v. Freehold Reg'l High Sch. Dist. (Monmouth), GRC Complaint No. 2010-108 (Final Decision dated November 29, 2011). The Custodian has therefore lawfully denied access to the notes. N.J.S.A. 47:1A-1.1.

5. The Custodian has unlawfully denied access to portions of the responsive representation questionnaires and must disclose same with redactions of employer/employee information to the Complainant via his preferred method of delivery. N.J.S.A. 43:21-11(g); N.J.S.A. 47:1A-6.
6. The Custodian has unlawfully denied access to portions of the responsive telephone hearing script and message sheets. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the records with redactions for exempted notes and information obtained from employers/employees to the Complainant via his preferred method of delivery (with the exception of pages 4 and 6, which are exempt from disclosure in whole as inter-agency or intra-agency advisory, consultative or deliberative material).
7. **The Custodian shall comply with item Nos. 5 and 6 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, to the Executive Director.**
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 29th Day of July, 2014

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: July 30, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

Christopher Lotito¹
Complainant
v.

Complaint Nos. 2013-66 and 2013-67²

**New Jersey Department of Labor,
Division of Unemployment Insurance³**
Custodial Agency

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

1. All records relating to the Complainant in Docket No. 347.059, i.e. the physical contents of the folder, as well as notes, data and transcripts collected by the claims examiners for adjudication purposes.
2. All records relating to the Complainant in Docket No. 408.907, i.e. the physical contents of the folder, as well as notes, data and transcripts collected by the claims examiners for adjudication purposes.

Custodian of Record: Greg Castellani
Request Received by Custodian: February 19, 2013
Response Made by Custodian: February 28, 2013
GRC Complaint Received: February 28, 2013

Records Submitted for *In Camera* Examination:

- Docket No. 347,059
 - Internal docketing information sheets and records.
 - Examiner's notes.
 - Representation questionnaire.
 - Telephone hearing contact sheet and message sheet.
- Docket No. 408,907
 - Internal docketing sheets

¹ No legal representation listed on record.

² The GRC consolidated these complaints for adjudication because of the commonality of the parties and/or issues.

³ Represented by Deputy Attorney General Adam Verone.

Background

March 25, 2014 Council Meeting:

At its March 25, 2014 public meeting, the Council considered the March 18, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. 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 following records to determine the validity of the Custodian's assertion that the records constitute ". . . records, reports and other information obtained from employees or employers . . ." and/or "inter-agency, intra-agency advisory, consultative or deliberative" material that are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g):
 - Docket No. 347,059
 - Internal docketing information sheets and records.
 - Examiner's notes.
 - Representation questionnaire.
 - Telephone hearing contact sheet and message sheet.
 - Docket No. 408,907
 - Internal docketing sheets

2. **The Custodian must deliver⁴ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 1 above), a document or redaction index⁵, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,⁶ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**

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

Procedural History:

On March 26, 2014, the Council distributed its Interim Order to all parties. On April 8, 2014, the Custodian's Counsel sought an extension of time to respond to the Interim Order. On

⁴ 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.

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

⁶ "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."

April 10, 2014, the GRC advised Counsel that the deadline to comply with the Council's Order expired on April 3, 2014; but that the GRC would allow an extension until April 15, 2014.

On April 15, 2014, the Custodian responded to the Council's Interim Order. The Custodian certified that he was providing nine (9) copies of the records requested for an *in camera* review. The Custodian noted that the docketing sheet for Docket Number 408-907 was printed from the electronic database because the paper file was not readily available.

Analysis

Compliance

At its March 25, 2014 meeting, the Council ordered the Custodian to submit to the GRC nine (9) copies of records related to two (2) docketed Division of Unemployment Insurance ("DUI") for an *in camera* review. The Council further required that the Custodian provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On March 26, 2014, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on April 3, 2014.

On April 8, 2014, three (3) business days after receipt of the Council's Order, Custodian's Counsel requested an extension of time to submit compliance. On April 10, 2014, the GRC noted that the compliance time had already expired; however, an extension until April 15, 2014 was granted. On April 15, 2014, the Council received the requested *in camera* records as well as certified confirmation of compliance with the Council's Order.

Therefore, the Custodian did not fully comply with the Council's March 25, 2014 Interim Order because although he provided nine (9) copies of the records requested for an *in camera* review and certified confirmation of compliance, he failed to do so within five (5) business days. Further, the Custodian failed to seek an extension of time until after the expiration of the compliance time frame.

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 excludes from the definition of a government record "inter-agency or intra-agency advisory, consultative or deliberative ["ACD"] material." N.J.S.A. 47:1A-1.1. OPRA further provides that "[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to any other statute ..." N.J.S.A. 47:1A-9(a).

The NJ Unemployment Compensation Law provides that:

All records, reports and other information obtained from employers and employees under this chapter, except to the extent necessary for the proper administration of this chapter, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties, and shall not be subject to subpoena or admissible in evidence in any civil action or proceeding other than one arising under this chapter, but any claimant at a hearing before an appeal tribunal, the division or the board of review shall be supplied with information from such records to the extent necessary for the proper presentation of his claim.

N.J.S.A. 43:21-11(g)

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

Docket Nos. 347,059 and 408,907 – Internal Docketing sheets/records

The records provided to the GRC comprise of Board of Review docket sheets, case flows and general information pages (11 and 8 pages respectively). The Custodian denied access to these records under N.J.S.A. 47:1A-9(a) and N.J.S.A. 43:21-11(g). The GRC notes that although “records, reports and other information obtained from employers and employees . . .” are exempt under N.J.S.A. 43:21-11(g), the provision includes an exception for a claimant appealing a decision upon proper presentation of said claim. *Id.* The provision also carries a fine of \$200.00 for any officer or employee who violates same.

Regarding the records, the Board of Review docket sheets certainly contain information from employers/employees on them to includes party names, contact information and social security numbers. The docket sheets also contain basic information such as docket numbers, claim dates, and basic appellate information. Additionally, case flow pages show basic information about the progress of Docket Nos. 347,059 and 408,907. The GRC is satisfied that the employers/employees’ information contained in the records are exempt from disclosure under N.J.S.A. 43:21-11(g) and that the Complainant has not provided any evidence that he meets the exception set forth therein. However, this provision does not cover basic docket and progress information.

Therefore, the Custodian lawfully denied access to the information contained in the docket sheets/records regarding the Complainant and relevant employer/employee information on pages 1-2, 5-7 and 8-9 for Docket No. 347,059 and pages 2, 4, 6 and 8 for Docket No. 408,907. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g). However, the Custodian unlawfully denied access to the remainder of the records which cannot be identified as employer/employee information. Thus, the Custodian must disclose both records with redactions for the exempt information and provide the remainder to the Complainant via his preferred method of delivery.

Docket No. 347,059 – Examiner’s Notes

The record provided to the GRC is handwritten notes on lined paper (7 pages) relevant to the above-mentioned docket number. The Custodian denied access to this record as ACD material. N.J.S.A. 47:1A-1.1.

As previously noted in the Council’s March 25, 2014 Interim Order, the Appellant Division held in O’Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534, 538 (App. Div. 2007), that handwritten notes of a meeting were exempt from disclosure as ACD material. Subsequent to the Appellate Division’s decision, in Sage v. Freehold Reg’l High Sch. Dist. (Monmouth), GRC Complaint No. 2010-108 (Final Decision dated November 29, 2011), the Council was tasked with determining whether a student’s handwritten notes were exempt as ACD material. There, the complainant argued that O’Shea, did not apply because the notes were not taken during a public meeting and thereafter used as a memory aid. However, the Council conducted an *in camera* review and held that “. . . because the handwritten student note contain[ed] information of an alleged incident . . . and was used in preparation of . . . Final Incident Report.” Id. (Final Decision dated November 29, 2011) at 6.

In this matter, the Examiner’s notes are definitely handwritten and appear to pertain to a telephone conference between the Complainant and employer. The notes also appear to relate directly to crux of the issue in Docket No. 347,059. Thus, the GRC is satisfied that the Examiner’s notes are exempt from disclosure.

Accordingly, because the Examiner’s notes are handwritten and memorialize a telephone conference between the parties in Docket No. 347,059, the notes are exempt as ACD material. O’Shea, 391 N.J. Super. at 538; Sage, GRC 2010-108. The Custodian has thus lawfully denied access to the notes. N.J.S.A. 47:1A-1.1.

Docket No. 347,059 – Representation Questionnaire

The representation questionnaires provided are template documents (2 pages) that appear to act as letters of representations for attorneys representing parties in an unemployment dispute before the New Jersey Department of Labor. The Custodian denied access to these records under N.J.S.A. 47:1A-9(a) and N.J.S.A. 43:21-11(g).

As was the case with the docket sheets there is employee and employer information present in the records warranting redaction under N.J.S.A. 43:21-11(g); however, the questionnaires in and of themselves are not exempt from disclosure. Thus, the GRC is not satisfied that denial of the record in whole is warranted.

Accordingly, the Custodian has unlawfully denied access to portions of the responsive representation questionnaires and must disclose same with redactions of employer/employee information to the Complainant via his preferred method of delivery. N.J.S.A. 43:21-11(g); N.J.S.A. 47:1A-6.

Docket No. 347,059 – Telephone hearing contact/message sheets

These records are comprised of two (2) main records: 1) a telephone hearing script (6 pages) comprising of boilerplate language and a multitude of notes by the assigned Examiner; and 2) Appeal Tribunal Telephone Hearing Messages (5 pages). The GRC will analyze each record separately.

Regarding the script, handwritten notes are present on every page, and in the instance of pages 4 and 6, are entirely comprised of handwritten notes. The remainder of the record is standard boilerplate that appears to guide an examiner conducting a telephone hearing. As noted above with the Examiner's notes, any handwritten notes contained in the script are clearly ACD material and include information provided by the employee and/or employer. However, no compelling argument as to why the boilerplate language is exempt from disclosure has been made, and thus the GRC is not satisfied that this content is exempt.

Regarding the hearing message sheets, these records are composed of a form to which the message taker can handwrite basic information. In most instances, the records generally contain the docket number, identity of caller, date, time and, in some instances, notes about the message taken. The records also include the message taker's signature and time taken. While there is some information included in these records that fall within the exemptions set forth in N.J.S.A. 43:21-11(g) (*i.e.* identity of caller, phone numbers, notes about content of conversation), general information regarding the docket number, time called and message taker information does not fall under the same exemption.

Therefore, the Custodian has unlawfully denied access to portions of the responsive telephone hearing script and message sheets. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the records with redactions for exempted notes and information obtained from employers/employees to the Complainant via his preferred method of delivery (with the exception of pages 4 and 6, which are exempt from disclosure in whole as ACD material).

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 March 25, 2014 Interim Order because although he provided nine (9) copies of the records requested for an *in camera* review and certified confirmation of compliance, he failed to do so within five (5) business days. Further, the Custodian failed to seek an extension of time until after the expiration of the compliance time frame.

2. The Custodian lawfully denied access to the information contained in the docket sheets/records regarding the Complainant and relevant employer/employee information on pages 1-2, 5-7 and 8-9 for Docket No. 347,059 and pages 2, 4, 6 and 8 for Docket No. 408,907. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g). However, the Custodian unlawfully denied access to the remainder of the records which cannot be identified as employer/employee information. Thus, the Custodian must disclose both records with redactions for the exempt information and provide the remainder to the Complainant via his preferred method of delivery.
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, 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 1:4-4,⁷ to the Executive Director.⁸**
4. Because the Examiner's notes are handwritten and memorialize a telephone conference between the parties in Docket No. 347,059, the notes are exempt as inter-agency or intra-agency advisory, consultative or deliberative material. O'Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534, 538 (App. Div. 2007); Sage v. Freehold Reg'l High Sch. Dist. (Monmouth), GRC Complaint No. 2010-108 (Final Decision dated November 29, 2011). The Custodian has therefore lawfully denied access to the notes. N.J.S.A. 47:1A-1.1.
5. The Custodian has unlawfully denied access to portions of the responsive representation questionnaires and must disclose same with redactions of employer/employee information to the Complainant via his preferred method of delivery. N.J.S.A. 43:21-11(g); N.J.S.A. 47:1A-6.
6. The Custodian has unlawfully denied access to portions of the responsive telephone hearing script and message sheets. N.J.S.A. 47:1A-6. Thus, the Custodian must disclose the records with redactions for exempted notes and information obtained from employers/employees to the Complainant via his preferred method of delivery (with the exception of pages 4 and 6, which are exempt from disclosure in whole as inter-agency or intra-agency advisory, consultative or deliberative material).
7. **The Custodian shall comply with item Nos. 5 and 6 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, to the Executive Director.**

⁷ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁸ 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.

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



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

March 25, 2014 Government Records Council Meeting

Christopher Lotito
Complainant

Complaint Nos. 2013-66 and 2013-67

v.

New Jersey Department of Labor,
Division of Unemployment Insurance
Custodian of Record

At the March 25, 2014 public meeting, the Government Records Council (“Council”) considered the March 18, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. 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 following records to determine the validity of the Custodian’s assertion that the records constitute “. . . records, reports and other information obtained from employees or employers . . .” and/or “inter-agency, intra-agency advisory, consultative or deliberative” material that are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g):
 - Docket No. 347.059
 - Internal docketing information sheets and records.
 - Examiner’s notes.
 - Representation questionnaire.
 - Telephone hearing contact sheet and message sheet.
 - Docket No. 408.907
 - Internal docketing sheets
2. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 1 above), a document or redaction index², as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,³ that the records provided are the records requested by**

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

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

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

the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.

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

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

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: March 26, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

Christopher Lotito¹
Complainant
v.

Complaint Nos. 2013-66 and 2013-67²

**New Jersey Department of Labor,
Division of Unemployment Insurance³**
Custodial Agency

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

1. All records relating to the Complainant in Docket No. 347.059, i.e. the physical contents of the folder, as well as notes, data and transcripts collected by the claims examiners for adjudication purposes.
2. All records relating to the Complainant in Docket No. 408.907, i.e. the physical contents of the folder, as well as notes, data and transcripts collected by the claims examiners for adjudication purposes.

Custodian of Record: Greg Castellani
Request Received by Custodian: February 19, 2013
Response Made by Custodian: February 28, 2013
GRC Complaint Received: February 28, 2013

Background⁴

Request and Response:

On February 17, 2013, the Complainant submitted two (2) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On February 28, 2013, the Custodian responded in writing requesting that Complainant state the reason for requesting said records as this information is necessary to process the Complainant’s OPRA requests. On the same day, the Complainant stated that he sought the records because he was the claimant in both cases. On March 1, 2013, the Custodian stressed that the Complainant must provide a more specific reason for requesting the records. The Custodian noted that no records will not be disclosed until the Complainant provides same.

¹ No legal representation listed on record.

² The GRC consolidated these complaints for adjudication because of the commonality of the parties and/or issues.

³ Represented by Deputy Attorney General Adam Verone.

⁴ 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.

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Denial of Access Complaint:

On February 28, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that the Custodian’s lack of a response is impinging on his ability to challenge DUI’s determinations.

Supplemental Response:

On March 8, 2013, the Custodian denied access to the Complainant’s two (2) OPRA requests under N.J.S.A. 47:1A-9(a) and N.J.S.A. 43:21-11(g). The Custodian noted that this statute exempts access to “[a]ll records . . . obtained . . . under the [NJ Unemployment Compensation Law] . . .” but does allow for claimants appealing an unemployment compensation benefits determination to an appeal tribunal, the DUI or the Board of Review to obtain these records. The Custodian further noted that in the absence of an appeal, a claimant may access these records by Court Order. The Custodian stated that because the Complainant failed to state the reason he sought the records, the DUI has no record of an active appeal and the Complainant did not produce a Court Order, he must deny access to the records.

Statement of Information:

On April 2, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that he received the Complainant’s OPRA requests on February 19, 2013 and responded on February 28, 2013. The Custodian certified that no search was necessary because he knows exactly where the records are located. The Custodian affirmed that the following records are responsive to the Complainant’s OPRA requests:

- Docket No. 347.059
 - Appeal Tribunal Decision.
 - Board of Review Decision.
 - Evidentiary exhibits submitted by employer.
 - Internal docketing information sheets and records.
 - Claimant’s motions to DOL.
 - Examiner’s notes.
 - Notice of Hearing.
 - Representation questionnaire.
 - Telephone hearing contact sheet and message sheet.
- Docket No. 408.907
 - Letters of appeal submitted by Complainant.
 - Appeal Tribunal Decision.
 - Appeal Tribunal Decision in Docket No. 347.059.
 - Board of Review Decision in Docket No. 347.059.
 - Notice of telephone hearing.
 - Internal docketing sheets.

The Custodian contended that that he was unable to disclose the records submitted by the employer because they are deemed confidential. N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g). The

Custodian further contended that the examiner's notes are clearly "inter-agency, intra-agency advisory, consultative or deliberative" ("ACD") material because the notes are pre-decisional to the Appeal Examiner's determination and contains opinions and impressions. *See In the Matter of Readoption with Amendements of Death Penalty Reg. N.J.A.C. 10A:23, by NJ Dep't of Corrections*, 367 *N.J. Super.* 61 (App. Div. 2004).

The Custodian certified that the transcript of the telephone hearing are not in the Complainant's files because the Board of Review transmits a copy to the Complainant following timely appeal to the Superior Court. The Custodian further certified that the original and three (3) additional copies are sent to the Clerk of the Appellate Division.

The Custodian certified that, regarding Docket 347.059, the Complainant's request for the file is premature because a Statement of Items Comprising the Record ("SICR") has not yet been filed with the Appellate Division. The Custodian further certified that the Complainant will receive the SICR and already has copies of those records relevant to his appeal (i.e. the Board of Review decision, Appeals Examiner's decision and any evidentiary exhibits entered into evidence).

The Custodian certified that, regarding Docket No. 408.907, the Complainant does have an appeal pending before the Board of Review. The Custodian affirmed that for this reason, the Complainant is entitled to some records in his file; however, the Complainant is already in possession of most of the contents of the file (Notice of Hearing, Appeal Tribunal decision and letter the Complainant submitted to DOL). The Custodian certified that if the Complainant wishes to receive additional copies of these records, same will be provided upon request.

Additional Submissions

On February 11, 2014, in light of the Custodian's SOI certification that the Complainant possessed responsive records, the GRC requested that the Complainant identify those records still at issue in this complaint. On the same day, the Complainant stated that he is seeking access to the following:

- Docket No. 347.059
 - Internal docketing information sheets and records.
 - Examiner's notes.
 - Representation questionnaire.
 - Telephone hearing contact sheet and message sheet.
- Docket No. 408.907
 - Internal docketing sheets.

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise

exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

OPRA provides that “[t]he provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to any other statute . . .” N.J.S.A. 47:1A-9(a).

The NJ Unemployment Compensation Law provides that:

All records, reports and other information obtained from employers and employees under this chapter, except to the extent necessary for the proper administration of this chapter, shall be confidential and shall not be published or open to public inspection other than to public employees in the performance of their public duties, and shall not be subject to subpoena or admissible in evidence in any civil action or proceeding other than one arising under this chapter, but any claimant at a hearing before an appeal tribunal, the division or the board of review shall be supplied with information from such records to the extent necessary for the proper presentation of his claim.

N.J.S.A. 43:21-11(g)

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

In O’Shea v. West Milford Bd. of Educ., GRC Complaint No. 2004-93 (April 2006), the Council stated that “neither the statute nor the courts have defined the terms . . . ‘advisory, consultative, or deliberative’ in the context of the public records law. The Council looks to an analogous concept, the deliberative process privilege, for guidance in the implementation of OPRA’s ACD exemption. Both the ACD exemption and the deliberative process privilege enable a governmental entity to shield from disclosure material that is pre-decisional and deliberative in nature. Deliberative material contains opinions, recommendations, or advice about agency policies. In Re the Liquidation of Integrity Ins. Co., 165 N.J. 75, 88 (2000); In re Readoption With Amendments of Death Penalty Reg., 182 N.J.149 (App. Div. 2004).

Further, in O’Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534, 538 (App. Div. 2007),⁵ the complainant requested handwritten notes of an executive session meeting. The Court held that:

We reject O’Shea’s contention that the Secretary’s handwritten notes, jotted down as a memory aid to assist in preparing the formal minutes, are public records merely because they were ‘made’ by a government official. Under that rationale

⁵ This case is an appeal of the GRC’s decision of O’Shea v. West Milford Bd. of Educ., GRC Complaint No. 2004-93 (April 2006).

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any Board member's personal handwritten notes, taken during a meeting to assist the member to recall what occurred, would be a public record because the member might arguably refer to them later in reviewing the Secretary's draft of the formal minutes. Taken further, every yellow-sticky note penned by a government official to help him or her remember a work-related task would be a public record. Such absurd results were not contemplated or required by OPRA.

Id.

Subsequent to the Appellate Division's decision, in Hardwick v. NJ Dep't of Transp., GRC Complaint No. 2007-164 (February 2008), the complainant sought access to the personal notes of the employees attending Department of Transportation staff meetings. The Council held that "the personal notes of the attendees which are responsive to the request are informal memory aids and are exempt from disclosure as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1 and O'Shea . . ."

Finally, in Sage v. Freehold Reg'l High School District (Monmouth), GRC Complaint No. 2010-108 (Interim Order dated February 24, 2011), the complainant disputed the custodian's denial of access to a student's handwritten note under the ACD exemption. The complainant argued that the Court's holding in O'Shea, did not apply here because the handwritten note was not taken during a public meeting and used as a memory aid. The Council ordered an *in camera* review and subsequently determined that the record constituted ACD material ". . . because the handwritten student note contain[ed] information of an alleged incident . . . and was used in preparation of . . . Final Incident Report." Id. (Final Decision dated November 29, 2011) at 6.

In Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council⁶ 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.

⁶ Paff v. NJ Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

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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 the instant complaint, the Custodian argued in the SOI that he was unable to disclose the records submitted by the employer because they are deemed confidential. N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g). However, on their face, the GRC cannot determine whether the internal docketing sheets, contact and message sheets and representation questionnaire contains any records, reports or information obtained from an employer or employee that would be considered exempt under the cited provision.

Further, the Custodian argued in the SOI that the responsive examiner's notes were exempt as ACD material because they were pre-decisional and contained opinions and impressions of the examiner. However, much like the record at issue in Sage, the examiner's notes cannot be unilaterally considered to be ACD on same level as a secretary's meeting notes.

Therefore, pursuant to Paff, 379 N.J. Super. at 346, the GRC must conduct an *in camera* review of the following records to determine the validity of the Custodian's assertion that the records constitute “. . . records, reports and other information obtained from employers or employees . . .” and/or ACD material that are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g):

- Docket No. 347.059
 - Internal docketing information sheets and records.
 - Examiner's notes.
 - Representation questionnaire.
 - Telephone hearing contact sheet and message sheet.
- Docket No. 408.907
 - Internal docketing sheets

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. 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 following records to determine the validity of the Custodian's assertion that the records constitute ". . . records, reports and other information obtained from employees or employers . . ." and/or "inter-agency, intra-agency advisory, consultative or deliberative" material that are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); N.J.S.A. 43:21-11(g):
 - Docket No. 347.059
 - Internal docketing information sheets and records.
 - Examiner's notes.
 - Representation questionnaire.
 - Telephone hearing contact sheet and message sheet.
 - Docket No. 408.907
 - Internal docketing sheets
2. **The Custodian must deliver⁷ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 1 above), a document or redaction index⁸, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,⁹ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso
Senior Case Manager

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

March 18, 2014

⁷ 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.

⁸ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁹ "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."

Christopher Lotito v. New Jersey Department of Labor, Division of Unemployment Insurance, 2013-66 & 2013-67 – Findings and Recommendations of the Executive Director