



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

November 18, 2014 Government Records Council Meeting

Donna Doran
Complainant

Complaint No. 2014-07

v.

Little Ferry Board of Education (Bergen)
Custodian of Record

At the November 18, 2014 public meeting, the Government Records Council (“Council”) considered the November 10, 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 failed to comply with the Council’s September 30, 2014 Interim Order because although he made the requested records available to the Complainant within the prescribed time frame, he failed to simultaneously provide certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the requested records, and failed to comply with the terms of the Council’s September 30, 2014 Interim Order because he failed to provide certified confirmation of compliance within the prescribed time period. However, the Custodian certified that he did make the records available to the Complainant within the prescribed time period. 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 18th Day of November, 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: November 20, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
November 18, 2014 Council Meeting**

**Donna Doran¹
Complainant**

GRC Complaint No. 2014-7

v.

**Little Ferry Board of Education (Bergen)²
Custodial Agency**

Records Relevant to Complaint:

December 11, 2013 OPRA Request No. 1³

“Time Sheets for hourly employees for the month of Nov. 1, 2013 to Dec. 20, 2013. Example attached.”

December 11, 2013 OPRA Request No. 2⁴

“Copy of the DVD for the 12-5-13 Board of Education minutes.”

Custodian of Record: Paul Vizzuso

Request Received by Custodian: December 11, 2013

Response Made by Custodian: December 19, 2013

GRC Complaint Received: January 10, 2014

Background

September 30, 2014 Council Meeting:

At its September 30, 2014 public meeting, the Council considered the September 23, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian has not borne his burden of proof that, prior to disclosure, the payment of a special service charge is warranted because of an extraordinary expenditure of time and effort needed to fulfill the Complainant’s request. N.J.S.A. 46:1A-6; N.J.S.A. 47:1A-5(c). See The Courier Post v. Lenape Regional High School, 360 N.J. Super. 191, 199 (Law Div. 2002); Scheeler v. NJ Dep’t of Education, GRC

¹ No legal representation listed on record.

² Represented by Stanley Turitz, Esq. of Ferrara, Turitz, Harracka, & Goldberg, P.C. (Hackensack, NJ).

³ The Complainant did not specify the medium of delivery.

⁴ The Complainant requested to pick up the document.

Complaint No. 2013-290 (Interim Order January 28, 2014). Thus, the Custodian shall disclose the requested records to the Complainant upon the Complainant's payment of the actual cost of the materials and supplies used to copy the requested records. N.J.S.A. 47:1A-5(b). The Custodian must identify any redacted documents and state the basis for such redaction.

2. **The Custodian shall comply with Item No. 1 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 1:4-4,⁵ to the Executive Director.⁶**
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 October 1, 2014, the Council distributed its Interim Order to all parties. On October 24, 2014, the GRC contacted the Complainant and Custodian via e-mail as to whether the Custodian made the requested records available to the Complainant. The Complainant replied via e-mail on October 26, 2014, stating that she received the records. On October 27, 2014, the Custodian responded via e-mail, also stating that the Complainant obtained the records. On November 5, 2014, the Custodian provided the Executive Director with his certification of compliance to the Council's Interim Order.

Analysis

Compliance

At its September 30, 2014 meeting, the Council ordered the Custodian to disclose the requested records upon receipt of payment for the actual cost of the materials and supplies used to copy said records within five (5) business days from receipt of the Interim Order. The Custodian was also ordered to submit certified confirmation of compliance to the Executive Director. On October 1, 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 October 8, 2014.

On November 5, 2014, the twenty-third (23rd) business day after receipt of the Council's Order, the Custodian submitted his certification of compliance. The Custodian certified that he

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

⁶ 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.

informed the Complainant via e-mail that the records were available for pickup on October 3, 2014.

Therefore, the Custodian failed to comply with the Council's September 30, 2014 Interim Order because although he made the requested records available to the Complainant within the prescribed time frame, he failed to simultaneously provide 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 the requested records, and failed to comply with the terms of the Council's September 30, 2014 Interim Order because he failed to provide certified confirmation of compliance within the prescribed time period. However, the Custodian certified that he did make the records available to the Complainant within the prescribed time period. 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 failed to comply with the Council's September 30, 2014 Interim Order because although he made the requested records available to the Complainant within the prescribed time frame, he failed to simultaneously provide certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the requested records, and failed to comply with the terms of the Council's September 30, 2014 Interim Order because he failed to provide certified confirmation of compliance within the prescribed time period. However, the Custodian certified that he did make the records available to the Complainant within the prescribed time period. 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: Samuel A. Rosado, Esq.
Staff Attorney

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

November 10, 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

September 30, 2014 Government Records Council Meeting

Donna Doran
Complainant

Complaint No. 2014-7

v.

Little Ferry Board of Education (Bergen)
Custodian of Record

At the September 30, 2014 public meeting, the Government Records Council ("Council") considered the September 23, 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 has not borne his burden of proof that, prior to disclosure, the payment of a special service charge is warranted because of an extraordinary expenditure of time and effort needed to fulfill the Complainant's request. N.J.S.A. 46:1A-6; N.J.S.A. 47:1A-5(c). See The Courier Post v. Lenape Regional High School, 360 N.J. Super. 191, 199 (Law Div. 2002); Scheeler v. NJ Dep't of Education, GRC Complaint No. 2013-290 (Interim Order January 28, 2014). Thus, the Custodian shall disclose the requested records to the Complainant upon the Complainant's payment of the actual cost of the materials and supplies used to copy the requested records. N.J.S.A. 47:1A-5(b). The Custodian must identify any redacted documents and state the basis for such redaction.
2. **The Custodian shall comply with Item No. 1 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**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

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

Interim Order Rendered by the
Government Records Council
On The 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 1, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Donna Doran¹
Complainant**

GRC Complaint No. 2014-7

v.

**Little Ferry Board of Education (Bergen)²
Custodial Agency**

Records Relevant to Complaint:

December 11, 2013 OPRA Request No. 1³

“Time Sheets for hourly employees for the month of Nov. 1, 2013 to Dec. 20, 2013. Example attached.”

December 11, 2013 OPRA Request No. 2⁴

“Copy of the DVD for the 12-5-13 Board of Education minutes.”

Custodian of Record: Paul Vizzuso

Request Received by Custodian: December 11, 2013

Response Made by Custodian: December 19, 2013

GRC Complaint Received: January 10, 2014

Background⁵

Request and Response:

On December 11, 2013, the Complainant submitted two (2) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On December 19, 2013, six (6) business days later, the Custodian responded in writing, stating that responsive documents for both OPRA requests were ready for pickup. The Custodian also stated that the total cost for the copies, the CD,⁶ and administrative charges was \$55.91.

¹ No legal representation listed on record.

² Represented by Stanley Turitz, Esq. of Ferrara, Turitz, Harracka, & Goldberg, P.C. (Hackensack, NJ).

³ The Complainant’s OPRA request did not specify the medium of delivery.

⁴ The Complainant’s OPRA request specifically requested to pick up the document.

⁵ 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.

⁶ For the purposes of this matter, the terms “DVD” and “CD” are used interchangeably.

On December 11, 2013, the Complainant responded in writing, requesting a breakdown of the charges incurred by the Custodian, including the administrative costs. That same day, the Custodian responded in writing, breaking down the charges as follows:

Copies (292 pgs. x \$.05)	\$14.60
CD	\$1.00
Administrative Costs	\$41.31

Additionally, the Custodian corrected the total cost to \$56.91.

On December 20, 2013, the Complainant emailed the Custodian seeking a more detailed breakdown of the administrative costs. Specifically, the Complainant sought the identity of the employee who fulfilled the requests, the length of time taken to complete, and the hourly rate charged.

On January 2, 2014, the Custodian responded to the Complainant via email, stating that he recalculated the administrative costs incurred using the lowest hourly wage at the Little Ferry Board of Education (“Little Ferry BOE”):

Copies (292 pgs. x \$.05)	\$14.60
CD	\$1.00
Administrative Costs (3 hours x \$10.50/hr)	\$31.50

The recalculation thus altered the total cost to \$47.10. The Custodian did not identify the employee who fulfilled the request.

Denial of Access Complaint:

On January 10, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian’s imposition of administrative costs was improper. The Complainant claimed that the Custodian handles the payroll duties for Little Ferry BOE, and therefore would have the requested time sheets readily available to him.

The Complainant at the time also objected to the \$1.00 charge for the cost of the CD, which contained the Little Ferry BOE meeting minutes for December 5, 2013. She asserted that the CD would contain only the public comments portion of the Little Ferry BOE’s public session. The Complainant claimed that the Little Ferry BOE’s policies regarding public meetings do not allow for the imposition of a \$1.00 fee for a copy of the audio recording.

Statement of Information:

On February 19, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he calculated the administrative costs at \$10.50 per hour, for approximately three (3) hours of dedicated work. The Custodian argued that the charge was fair,

and claimed that the Complainant's multiple OPRA requests have burdened his staff and monopolized resources.

Additional Submissions:

On August 22, 2014, the Custodian provided the following in response to the GRC's fourteen (14) point questionnaire regarding the propriety of imposing a special service charge.

Question	Custodian's Response
What records are requested?	<ol style="list-style-type: none"> 1. Records of time sheets from 11/1/13 - 12/20/13 2. DVD tape of Board meeting 12/5/13
Give a general nature description and number of the government records requested.	Same as [question] #1.
What is the period of time over which the records extend?	<ol style="list-style-type: none"> 1. 11/1/13 – 12/20/13 2. 12/5/13
Are some or all of the records sought archived or in storage?	Yes.
What is the size of the agency?	Approximately 120 employees.
What is the number of employees available to accommodate the records request?	Two (2) for the time sheets & two (2) for the DVD tape.
To what extent do the requested records have to be redacted?	None.
What is the level of personnel, hourly rate, and number hours, if any, required for a government employee to locate, retrieve, and assemble the records for copying?	Time sheets – myself (BA), clerical or technology technician up to one (1) hour at a rate of \$10.50/hr which is the lowest hourly rate we pay an employee.
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?	BA up to one (1) hour, 10.50/hr.
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 space?	Time sheets – myself (BA), clerical or technology technician up to one (1) hour at a rate of \$10.50/hr which is the lowest hourly rate we pay an employee.
What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?	We would use district personnel to perform the tasks.
Who in the agency will perform the work associated with the records request and that person's hourly rate?	<ol style="list-style-type: none"> 1. DVD tape Mark Horst – would charge the lowest district hourly rate \$10.50. 2. Not sure which clerical person I would assign to the task of pulling and making copies time sheets [sic], in any case we

	would charge the lowest hourly rate of \$10.50.
What is the availability of information technology and copying capabilities?	Normal time frame.
Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce, and return the requested documents.	This particular request should not take more than one (1) hour to complete the time sheets request at a cost of \$10.50 and \$1.00 for the DVD.

On August 27, 2014, the Complainant emailed the GRC, responding to the Custodian’s answers to the fourteen (14) point questionnaire. Specifically, the Complainant argued that the requested records were readily available to the Custodian at the time of the request and were not archived or in storage. Additionally, the Complainant contended that she sought the time sheets only for hourly employees with the Little Ferry BOE *vis-à-vis* the total workforce.

The Complainant also stated that the \$1.00 charge for the DVD is no longer in contention in the current matter, but still disputes the imposition of administrative costs for creating and compiling the DVD.

Analysis

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 ...* The requestor shall have the *opportunity to review and object to the charge* prior to it being incurred.

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

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 Regional High School, 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. The school district assessed a special service charge due to the “extraordinary burden” placed upon them in fulfilling 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 identified the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate the request” pursuant to OPRA:

- The volume of government records involved;
- The period of time over which the records were received by the governmental unit;
- Whether some or all of the records sought are archived;
- The amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying;
- The amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and
- 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 the instant matter, the Custodian provided a response to questions posed by the GRC that reflect that analytical framework outlined in Courier Post regarding the proper assessment of a special service charge. Based upon the Custodian’s response and the remaining submissions, the evidence of record fails to demonstrate that an “extraordinary expenditure of time and effort” is needed to fulfill the Complainant’s OPRA request, warranting a special service charge.

In favor of imposing a special service charge, the record establishes that the Custodian identified 292 responsive documents to the Complainant’s request for time sheets. The Custodian also claimed that some or all of the records sought were either archived or in storage, but did not clarify further. Additionally, the Custodian claimed that the task necessitated an employee to monitor for the inspection or examination of the requested records. Furthermore, the Custodian stated that it would take up to an hour to return the records to their original storage space.

However, the record also indicates that up to four (4) employees were available to complete the task; the records did not require redaction; the task of pulling and copying the requested timesheets could have been accomplished by clerical staff; and the requisite copying and scanning facilities were present and available at the Little Ferry BOE's offices. Unlike the requested records in Courier Post, which consisted of thousands of pages produced by four (4) law firms over six (6) years, here the records sought spanned less than two (2) months, and comprised less than three hundred (300) pages. *See Courier Post*, 360 N.J. Super. at 193.

Additionally, the proposed special service charge of \$31.50 is based on three (3) hours of estimated work. While this may represent a significant portion of the Custodian's working day, the Custodian stated in the questionnaire that he is not the only employee available to complete the task. Even if the Custodian was the only individual available, three (3) hours are insufficient to qualify as placing an "extraordinary burden" on either the Custodian or Little Ferry BOE. *See id.* *See also Scheeler v. NJ Dep't of Education*, GRC Complaint No. 2013-290 (Interim Order January 28, 2014) (estimated four (4) hours of dedicated work does not place an extraordinary burden on the custodian or the agency). Moreover, while the Custodian claimed that the request took three (3) hours to complete, he stated in response to the GRC's questionnaire that the request could have been completed within one (1) hour.

Therefore, the Custodian has not borne his burden of proof that, prior to disclosure, the payment of a special service charge is warranted because of an extraordinary expenditure of time and effort needed to fulfill the Complainant's request. N.J.S.A. 46:1A-6; N.J.S.A. 47:1A-5(c). *See Courier Post*, 360 N.J. Super. at 199; *Scheeler*, GRC No. 2013-290. Thus, the Custodian shall disclose the requested records to the Complainant upon the Complainant's payment of the actual cost of the materials and supplies used to copy the requested records. N.J.S.A. 47:1A-5(b). The Custodian must identify any redacted documents and state the basis for such redaction.

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 has not borne his burden of proof that, prior to disclosure, the payment of a special service charge is warranted because of an extraordinary expenditure of time and effort needed to fulfill the Complainant's request. N.J.S.A. 46:1A-6; N.J.S.A. 47:1A-5(c). *See The Courier Post v. Lenape Regional High School*, 360 N.J. Super. 191, 199 (Law Div. 2002); *Scheeler v. NJ Dep't of Education*, GRC Complaint No. 2013-290 (Interim Order January 28, 2014). Thus, the Custodian shall disclose the requested records to the Complainant upon the Complainant's payment of the actual cost of the materials and supplies used to copy the requested records.

N.J.S.A. 47:1A-5(b). The Custodian must identify any redacted documents and state the basis for such redaction.

2. **The Custodian shall comply with Item No. 1 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**
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: Samuel A. Rosado, Esq.
Staff Attorney

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

September 23, 2014

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 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.