



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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Acting Commissioner

**FINAL DECISION**

**May 26, 2015 Government Records Council Meeting**

Salvatore J. Sorce  
Complainant

Complaint No. 2014-109

v.

Stafford Township (Ocean)  
Custodian of Record

At the May 26, 2015 public meeting, the Government Records Council (“Council”) considered the May 19, 2015 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 April 28, 2015, Interim Order because she responded in the prescribed time frame by providing the responsive invoices to the Complainant in accordance with the Council’s *in camera* examination and simultaneously providing certified confirmation of compliance to the Executive Director.
2. The Custodian violated the immediate access provision of OPRA, her response was insufficient, and she unlawfully denied access to a majority of the redacted material in the responsive invoices. However, the Custodian did properly redact one entry on the May 9, 2013, invoice and timely complied with the Council’s January 30, and April 28, 2015, Interim Orders. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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



Final Decision Rendered by the  
Government Records Council  
On The 26<sup>th</sup> Day of May, 2015

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: May 28, 2015**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
May 26, 2015 Council Meeting**

**Salvatore J. Sorce<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-109**

v.

**Stafford Township (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Inspection and hardcopies via pickup of:

1. Invoices for CME Consulting & Municipal Engineers (“CME”) regarding the Stafford Mitigation Property (“Property”), block 54, lots 21.02 and 26, and other Walters Group entities since January 2013.
2. Invoices for Christopher Connors, Esq., Stafford Township (“Township”) attorney, regarding the Property, other Walters Group entities, and Township mitigation since January 2013.
3. Invoices for Dasti, Murphy, McGuckin, Ulaky, Koutsouirs & Connors (“Dasti”) regarding Walters Group entities, the Township, and Township mitigation since January 2013.
4. Invoices for Kevin N. Starkey, Esq., Gilmore & Monahan (“Gilmore”), regarding Walters Group entities, the Township, and Township mitigation since January 2013.

**Custodian of Record:** Bernadette M. Park

**Request Received by Custodian:** February 7, 2014

**Response Made by Custodian:** March 10, 2014

**GRC Complaint Received:** March 11, 2014

**Background**

April 28, 2015 Council Meeting:

At its April 28, 2015, public meeting, the Council considered the April 21, 2015, *In Camera* Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

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

<sup>2</sup> Represented by Christopher J. Dasti, Esq., of Dasti, Murphy, McGuckin, Ulaky, Koutsouirs & Connors (Forked River, NJ).

1. The Custodian complied with the Council's January 30, 2015, Interim Order because she responded in the prescribed time frame, providing nine (9) copies of the responsive invoices (with and without redactions) and simultaneously provided certified confirmation of compliance to the Executive Director.
2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *in camera* examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.<sup>3</sup>**
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 April 29, 2015, the Council distributed its Interim Order to all parties.

On April 30, 2015, the Custodian sent copied of the responsive invoices to the Complainant. On May 1, 2015, the GRC received the Custodian's response to the Council's Interim Order. The Custodian certified that on April 30, 2015, she sent the Complainant a copy of the responsive invoices in accordance with the Council's Order to disclose same per the *in camera* examination.

#### Analysis

##### Compliance

At its April 28, 2015, meeting, the Council ordered the Custodian to comply with the findings of its *in camera* examination and to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On April 29, 2015, 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 May 6, 2015.

On April 30, 2015, the first (1<sup>st</sup>) business day after receipt of the Order, the Custodian provided the responsive invoices in accordance with the Council's *in camera* examination to the Complainant. On May 1, 2015, the second (2<sup>nd</sup>) business day after receipt of the Council's Order, the GRC received the Custodian's certified confirmation of compliance.

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<sup>3</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.

Therefore, the Custodian complied with the Council's April 28, 2015 Interim Order because she responded in the prescribed time frame by providing the responsive invoices to the Complainant in accordance with the Council's *in camera* examination and simultaneously providing 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)).

Here, the Custodian violated the immediate access provision of OPRA, her response was insufficient, and she unlawfully denied access to a majority of the redacted material in the responsive invoices. However, the Custodian did properly redact one entry on the May 9, 2013 invoice and timely complied with the Council's January 30, and April 28, 2015 Interim Orders. 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 complied with the Council's April 28, 2015, Interim Order because she responded in the prescribed time frame by providing the responsive invoices to

the Complainant in accordance with the Council's *in camera* examination and simultaneously providing certified confirmation of compliance to the Executive Director.

2. The Custodian violated the immediate access provision of OPRA, her response was insufficient, and she unlawfully denied access to a majority of the redacted material in the responsive invoices. However, the Custodian did properly redact one entry on the May 9, 2013, invoice and timely complied with the Council's January 30, and April 28, 2015, Interim Orders. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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

Reviewed By: Joseph D. Glover  
Executive Director

May 19, 2015



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

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Acting Commissioner

INTERIM ORDER

April 28, 2015 Government Records Council Meeting

Salvatore J. Sorce  
Complainant

Complaint No. 2014-109

v.

Stafford Township (Ocean)  
Custodian of Record

At the April 28, 2015 public meeting, the Government Records Council (“Council”) considered the April 21, 2015 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s January 30, 2015, Interim Order because she responded in the prescribed time frame, providing nine (9) copies of the responsive invoices (with and without redactions) and simultaneously provided certified confirmation of compliance to the Executive Director.
2. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *in camera* examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.<sup>1</sup>**
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.

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<sup>1</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.

Interim Order Rendered by the  
Government Records Council  
On The 28<sup>th</sup> Day of April, 2015

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: April 29, 2015**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director  
April 28, 2015 Council Meeting**

**Salvatore J. Sorce<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-109**

v.

**Stafford Township (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Inspection and hardcopies via pickup of:

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2. Invoices for Christopher Connors, Esq., Stafford Township (“Township”) attorney, regarding the Property, other Walters Group entities, and Township mitigation since January 2013.
3. Invoices for Dasti, Murphy, McGuckin, Ulaky, Koutsouirs & Connors (“Dasti”) regarding Walters Group entities, the Township, and Township mitigation since January 2013.
4. Invoices for Kevin N. Starkey, Esq., Gilmore & Monahan (“Gilmore”), regarding Walters Group entities, the Township, and Township mitigation since January 2013.

**Custodian of Record:** Bernadette M. Park

**Request Received by Custodian:** February 7, 2014

**Response Made by Custodian:** March 10, 2014

**GRC Complaint Received:** March 11, 2014

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

- Invoice No. 25187, dated May 9, 2013.
- Invoice No. 26021, dated October 23, 2013.
- Invoice No. 26097, dated November 7, 2013.
- Invoice No. 26316, dated January 8, 2014.

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

<sup>2</sup> Represented by Christopher J. Dasti, Esq., of Dasti, Murphy, McGuckin, Ulaky, Koutsouirs & Connors (Forked River, NJ).

## Background

### January 30, 2015 Council Meeting:

At its January 30, 2015, public meeting, the Council considered the January 20, 2015, Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian's failure to respond immediately to the Complainant's OPRA request for invoices results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5(e). See Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007). However, the GRC declines to order disclosure of responsive records because the Custodian disclosed same to the Complainant on March 13, 2014.
2. Because the Custodian failed to provide a specific lawful basis for redactions made to the Starkey invoices, the Custodian's response to the Complainant's OPRA request is insufficient. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008). See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-204 *et seq.* (Interim Order dated October 26, 2010).
3. The GRC must conduct an *in camera* review of the responsive Starkey invoices to determine the validity of the Custodian's assertion that the redacted portions of same are subject to attorney-client privilege exemption under OPRA. See Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005); N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver<sup>3</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 3 above), nine (9) copies of the redacted records, a document or redaction index<sup>4</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>5</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

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

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

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

### Procedural History:

On February 3, 2015, the Council distributed its Interim Order to all parties. On February 9, 2015, the Custodian responded to the Council's Interim Order.

The Custodian certified that she provided nine (9) copies of both the redacted and unredacted records as required by the Council. Additionally, the Custodian affirmed that she provided a document index reflecting the following basis for redactions: (1) attorney-client privilege, and (2) information not responsive to the Complainant's OPRA request. The Custodian noted that the Complainant only sought records associated with the Walters Group entities; thus, she asserted that she lawfully redacted all unrelated information.

### Analysis

#### Compliance

At its January 30, 2015, meeting, the Council ordered the Custodian to submit nine (9) copies of the responsive invoices with and without redactions for an *in camera* review. Further, the Council ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On February 3, 2015, 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 February 10, 2015.

On February 9, 2015, the fourth (4<sup>th</sup>) business day after receipt of the Council's Order, the GRC received the Custodian's compliance package, which included nine (9) copies of the responsive invoices with and without redactions, as well as certified confirmation of compliance.

Therefore, the Custodian complied with the Council's January 30, 2015, Interim Order because she responded in the prescribed time frame providing nine (9) copies of the responsive invoices (with and without redactions) and simultaneously provided certified confirmation of compliance to the Executive Director.

#### Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful. N.J.S.A. 47:1A-6.

OPRA provides that a "government record" shall not include "any record within the attorney-client privilege. This paragraph *shall not be construed as exempting from access attorney or consultant bills or invoices except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege . . .*" N.J.S.A. 47:1A-1.1 (emphasis added).

To assert attorney-client privilege, a party must show that there was a confidential communication between lawyer and client in the course of that relationship and in professional confidence. N.J.R.E. 504(1). Such communications are only those “which the client either expressly made confidential or which [one] could reasonably assume under the circumstances would be understood by the attorney to be so intended.” State v. Schubert, 235 N.J. Super. 212, 221 (App. Div. 1989). However, merely showing that “the communication was from client to attorney does not suffice, but the circumstances indicating the intention of secrecy must appear.” Id. at 220-21.

In the context of public entities, the attorney-client privilege extends 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 relationship does not automatically and completely insulate attorney billings from disclosure. *See* Hunterdon Cnty. P.B.A. Local 188 v. Twp. of Franklin, 286 N.J. Super. 389, 394; In the Matter of Grand Jury Subpoenas, 241 N.J. Super. 18, 30 (App. Div. 1989).

Additionally, both the Appellate Division and Council have determined that a custodian unlawfully redacted records when those redacted portions were “not responsive” to the subject OPRA request. *See* ACLU v. NJ Div. of Criminal Justice, 435 N.J. Super. 533, 540-541 (App. Div. 2014)(holding that OPRA does not provide a custodian the authority to “unilaterally determine what sections of an indisputably public document falls within the scope of a request”); Hyland v. Twp. of Lebanon (Hunterdon), GRC Complaint No. 2012-227 *et seq.* (Interim Order dated June 24, 2014)(holding that redacting information “not relevant to” an OPRA request was not a lawful basis to deny access to redacted material).

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

<b>Redaction No.</b>	<b>Record Name/Date</b>	<b>Description of Redaction</b>	<b>Custodian’s Explanation/ Citation for Non-disclosure or Redactions</b>	<b>Findings of the <i>In Camera</i> Examination<sup>6</sup></b>
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<sup>6</sup> **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted, a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker and then provide a copy of the blacked-out record to the requester.

1.	Invoice No. 25187: January 10, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney on ongoing litigation</li> <li>• Amount of time billed, total charge, and attorney's initials.</li> </ul>	<p>Attorney-client privileged information regarding pending litigation. <u>N.J.S.A. 47:1A-1.1.</u></p> <p>Not responsive to the Complainant's OPRA request.</p>	<p>Regarding the description of work conducted, the GRC is satisfied that same is exempt under <u>N.J.S.A. 47:1A-1.1</u>, because disclosure of same could reveal strategy. However, the date, amount of time billed, and attorney's initials are not protected under this privilege. <b>Thus, the Custodian unlawfully redacted these portions of the entry and must disclose same.</b></p>
2.	Invoice No. 25187: January 14, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding a proposed ordinance</li> <li>• Amount of time billed, total charge, and attorney's initials.</li> </ul>	<p>Attorney-client privileged information regarding pending litigation. <u>N.J.S.A. 47:1A-1.1.</u></p> <p>Not responsive to the Complainant's OPRA request.</p>	<p>The redacted information does not fall within the attorney-client privilege. The information is general enough that it does not reveal any legal advice or strategy. Additionally, the date, amount of time billed, and attorney's initials are not protected under this privilege. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
3.	Invoice No. 25187: January 17, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding a meeting</li> </ul>	<p>Not responsive to the Complainant's OPRA request.</p>	<p>Redacting information "not responsive to" a request is not a lawful basis to deny access to records</p>

		<ul style="list-style-type: none"> <li>Amount of time billed, total charge, and attorney's initials.</li> </ul>		<p>under OPRA. <i>See</i> <u>ACLU, 435 N.J. Super.</u> at 540-541; <u>Hyland</u>, GRC 2012-227 <i>et seq.</i></p> <p>Additionally, the date, amount of time billed, and attorney's initials are not protected.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
4.	Invoice No. 25187: January 29, 2013, entry.	<ul style="list-style-type: none"> <li>Description of work conducted by attorney</li> <li>Amount of time billed, total charge, and attorney's initials.</li> </ul>	Not responsive to the Complainant's OPRA request.	<p>Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU, 435 N.J. Super.</u> at 540-541; <u>Hyland</u>, GRC 2012-227 <i>et seq.</i></p> <p>Additionally, the amount of time billed and attorney's initials are not protected.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
5.	Invoice No. 25187: February 5, 2013, entry.	<ul style="list-style-type: none"> <li>Date</li> <li>Description of work conducted by attorney regarding a draft resolution</li> <li>Amount of time billed, total charge, and attorney's initials.</li> </ul>	Not responsive to the Complainant's OPRA request.	<p>Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU, 435 N.J. Super.</u> at 540-541; <u>Hyland</u>, GRC 2012-227 <i>et seq.</i></p> <p>Additionally, the date, amount of time billed, and attorney's</p>

				initials are not protected. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>
6.	Invoice No. 25187: February 20, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding communications to various Township officials.</li> <li>• Amount of time billed, total charge and attorney's initials.</li> </ul>	<p>Attorney-client privileged information regarding pending litigation. <u>N.J.S.A. 47:1A-1.1.</u></p> <p>Not responsive to the Complainant's OPRA request.</p>	<p>The redacted information does not fall within the attorney-client privilege. The information is general enough that it does not reveal any legal advice or strategy. Additionally, the date, amount of time billed and attorney's initials are not protected under this privilege.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
7.	Invoice No. 25187: March 4, 2013, entry,	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding a meeting with the Township</li> <li>• Amount of time spent, total charge, and attorney's initials</li> </ul>	<p>Attorney-client privileged information regarding pending litigation. <u>N.J.S.A. 47:1A-1.1.</u></p> <p>Not responsive to the Complainant's OPRA request.</p>	<p>The redacted information does not fall within the attorney-client privilege. The information is general enough that it does not reveal any legal advice or strategy. Additionally, the date, amount of time billed, and attorney's initials are not protected under this privilege.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>

8.	Invoice No. 26021: August 14, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding a telephone call</li> <li>• Amount of time spent, total charge, and attorney's initials</li> </ul>	<p>Attorney-client privileged information regarding pending litigation. <u>N.J.S.A. 47:1A-1.1.</u></p> <p>Not responsive to the Complainant's OPRA request.</p>	<p>The redacted information does not fall within the attorney-client privilege. The information is general enough that it does not reveal any legal advice or strategy. Additionally, the date, amount of time billed, and attorney's initials are not protected under this privilege.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
9.	Invoice No. 26021: September 24, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding a meeting with the Township</li> <li>• Amount of time spent, total charge, and attorney's initials.</li> </ul>	<p>Attorney-client privileged information regarding pending litigation. <u>N.J.S.A. 47:1A-1.1.</u></p> <p>Not responsive to the Complainant's OPRA request.</p>	<p>The redacted information does not fall within the attorney-client privilege. The information is general enough that it does not reveal any legal advice or strategy. Additionally, the date, amount of time billed, and attorney's initials are not protected under this privilege.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
10.	Invoice No. 26021: September 25, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding a telephone call with the</li> </ul>	<p>Not responsive to the Complainant's OPRA request.</p>	<p>Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i></p>



		<p>Township Administrator on various issues</p> <ul style="list-style-type: none"> <li>• Amount of time spent, total charge, and attorney's initials.</li> </ul>		<p><u>ACLU</u>, 435 N.J. Super. at 540-541; <u>Hyland</u>, GRC 2012-227 <i>et seq.</i></p> <p>Additionally, the date, amount of time billed, and attorney's initials are not protected.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
11.	Invoice No. 26021: September 30, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding a telephone call with the Township Administrator on various issues</li> <li>• Amount of time spent, total charge, and attorney's initials.</li> </ul>	Not responsive to the Complainant's OPRA request.	<p>Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU</u>, 435 N.J. Super. at 540-541; <u>Hyland</u>, GRC 2012-227 <i>et seq.</i></p> <p>Additionally, the date, amount of time billed, and attorney's initials are not protected.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
12.	Invoice No. 26021: October 3, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding proposed ordinances and Township meetings</li> <li>• Amount of time spent, total charge, and attorney's initials.</li> </ul>	Not responsive to the Complainant's OPRA request.	<p>Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU</u>, 435 N.J. Super. at 540-541; <u>Hyland</u>, GRC 2012-227 <i>et seq.</i></p> <p>Additionally, the date, amount of time billed, and attorney's</p>

				initials are not protected. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>
13.	Invoice No. 26021: October 4, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding correspondence and Township meetings,</li> <li>• Amount of time spent, total charge, and attorney's initials.</li> </ul>	Not responsive to the Complainant's OPRA request.	Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU</u> , 435 <u>N.J. Super.</u> at 540-541; <u>Hyland</u> , GRC 2012-227 <i>et seq.</i> Additionally, the date, amount of time billed, and attorney's initials are not protected. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>
14.	Invoice No. 26021: October 9, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding other Township businesses</li> <li>• Amount of time spent, total charge, and attorney's initials.</li> </ul>	Attorney-client privileged information regarding pending litigation. <u>N.J.S.A.</u> 47:1A-1.1.  Not responsive to the Complainant's OPRA request.	The redacted information does not fall within the attorney-client privilege. The information is general enough that it does not reveal any legal advice or strategy. Additionally, the date, amount of time billed, and attorney's initials are not protected under this privilege. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>

15.	Invoice No. 26021: October 10, 2013, entry.	The October 10, 2013, entry was not redacted in the copy provided to the GRC as part of the Statement of Information and <i>in camera</i> package.	Attorney-client privileged information regarding pending litigation. <u>N.J.S.A. 47:1A-1.1.</u>  Not responsive to the Complainant's OPRA request.	Because this entry was not redacted, the GRC declines to address the disclosability of same.
16.	Invoice No. 26021: October 11, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding correspondence, litigation, and preparation of pleadings</li> <li>• Amount of time spent, total charge, and attorney's initials.</li> </ul>	Attorney-client privileged information regarding pending litigation. <u>N.J.S.A. 47:1A-1.1.</u>  Not responsive to the Complainant's OPRA request.	The redacted information does not fall within the attorney-client privilege. The information is general enough that it does not reveal any legal advice or strategy. Additionally, the date, amount of time billed, and attorney's initials are not protected under this privilege. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>
17.	Invoice No. 26021: October 15, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding correspondence, litigation, and preparation of pleadings</li> <li>• Amount of time spent, total charge, and attorney's initials.</li> </ul>	Attorney-client privileged information regarding pending litigation. <u>N.J.S.A. 47:1A-1.1.</u>  Not responsive to the Complainant's OPRA request.	The redacted information does not fall within the attorney-client privilege. The information is general enough that it does not reveal any legal advice or strategy. Additionally, the date, amount of time billed, and attorney's initials are not protected under this privilege. <b>Thus, the Custodian</b>

				<b>unlawfully redacted the entry and must disclose same.</b>
18.	Invoice No. 26021: October 16, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding correspondence, litigation, and preparation of pleadings</li> <li>• Amount of time spent, total charge and attorney's initials.</li> </ul>	<p>Attorney-client privileged information regarding pending litigation. <u>N.J.S.A. 47:1A-1.1.</u></p> <p>Not responsive to the Complainant's OPRA request.</p>	<p>The redacted information does not fall within the attorney-client privilege. The information is general enough that it does not reveal any legal advice or strategy. Additionally, the date, amount of time billed, and attorney's initials are not protected under this privilege.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
19.	Invoice No. 26021: Additional billing and totals	Total numbers of billings, additional time and balances	Not responsive to the Complainant's OPRA request.	<p>Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU, 435 N.J. Super.</u> at 540-541; <u>Hyland, GRC 2012-227 et seq.</u></p> <p>Additionally, the date, amount of time billed, and attorney's initials are not protected.</p> <p><b>Thus, the Custodian unlawfully redacted this information and must disclose same.</b></p>
20.	Invoice No. 26097: October 24, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney</li> </ul>	Attorney-client privileged information regarding pending	The redacted information does not fall within the attorney-client

		<p>regarding conference call on pending litigation</p> <ul style="list-style-type: none"> <li>• Amount of time spent, total charge and attorney's initials</li> </ul>	<p>litigation. <u>N.J.S.A.</u> 47:1A-1.1.</p> <p>Not responsive to the Complainant's OPRA request.</p>	<p>privilege. The information is general enough that it does not reveal any legal advice or strategy. Additionally, the date, amount of time billed and attorney's initials are not protected under this privilege.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
21.	Invoice No. 26097:October 25, 2013 entry	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding conference call on pending litigation</li> <li>• Amount of time spent, total charge, and attorney's initials.</li> </ul>	<p>No reason for redaction provided in the document index.</p>	<p>To the extent that this redaction was based on its non-responsiveness to the Complainant's OPRA request, same is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU</u>, 435 <u>N.J. Super.</u> at 540-541; <u>Hyland</u>, GRC 2012-227 <i>et seq.</i></p> <p>Additionally, the date, amount of time billed, and attorney's initials are not protected.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
22.	Invoice No. 26097: October 28, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding proposed ordinance</li> <li>• Amount of time spent, total</li> </ul>	<p>Not responsive to the Complainant's OPRA request.</p>	<p>Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU</u>, 435 <u>N.J. Super.</u> at 540-541;</p>

		charge, and attorney's initials.		<u>Hyland</u> , GRC 2012-227 <i>et seq.</i> Additionally, the date, amount of time billed, and attorney's initials are not protected. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>
23.	Invoice No. 26097: October 29, 2013, entry.	<ul style="list-style-type: none"> <li>• Description of work conducted by attorney regarding proposed ordinance</li> <li>• Amount of time spent, total charge, and attorney's initials.</li> </ul>	Not responsive to the Complainant's OPRA request.	Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU</u> , 435 <u>N.J. Super.</u> at 540-541; <u>Hyland</u> , GRC 2012-227 <i>et seq.</i> Additionally, the amount of time billed and attorney's initials are not protected. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>
24.	Invoice No. 26097: October 30, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding proposed ordinance</li> <li>• Amount of time spent, total charge and attorney's initials.</li> </ul>	Not responsive to the Complainant's OPRA request.	Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU</u> , 435 <u>N.J. Super.</u> at 540-541; <u>Hyland</u> , GRC 2012-227 <i>et seq.</i> Additionally, the date, amount of time billed, and attorney's initials are not protected. <b>Thus, the Custodian</b>

				<b>unlawfully redacted the entry and must disclose same.</b>
25.	Invoice No. 26097: Additional billing and totals.	Total numbers of billings, additional time, and balances	Not responsive to the Complainant's OPRA request.	Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU, 435 N.J. Super.</u> at 540-541; <u>Hyland</u> , GRC 2012-227 <i>et seq.</i> <b>Thus, the Custodian unlawfully redacted this information and must disclose same.</b>
26.	Invoice No. 26316: November 4, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding proposed ordinance and telephone conference</li> <li>• Amount of time spent, total charge, and attorney's initials.</li> </ul>	Not responsive to the Complainant's OPRA request.	Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU, 435 N.J. Super.</u> at 540-541; <u>Hyland</u> , GRC 2012-227 <i>et seq.</i> Additionally, the date, amount of time billed, and attorney's initials are not protected. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>
27.	Invoice No. 26316: November 8, 2013, entry.	<ul style="list-style-type: none"> <li>• Description of work conducted by attorney regarding correspondence to Township re: proposed ordinance</li> <li>• Amount of time</li> </ul>	Not responsive to the Complainant's OPRA request.	Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU, 435 N.J. Super.</u> at 540-541;

		spent, total charge and attorney's initials.		<u>Hyland</u> , GRC 2012-227 <i>et seq.</i> Additionally, the amount of time billed and attorney's initials are not protected. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>
28.	Invoice No. 26316: November 12, 2013, entry.	<ul style="list-style-type: none"> <li>• Description of work conducted by attorney regarding correspondence to Township re: proposed ordinance</li> <li>• Amount of time spent, total charge and attorney's initials.</li> </ul>	Not responsive to the Complainant's OPRA request.	Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU</u> , 435 <u>N.J. Super.</u> at 540-541; <u>Hyland</u> , GRC 2012-227 <i>et seq.</i> Additionally, the amount of time billed and attorney's initials are not protected. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>
29.	Invoice No. 26316: November 13, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding telephone call re: proposed ordinance</li> <li>• Amount of time spent, total charge and attorney's initials.</li> </ul>	Not responsive to the Complainant's OPRA request.	Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU</u> , 435 <u>N.J. Super.</u> at 540-541; <u>Hyland</u> , GRC 2012-227 <i>et seq.</i> Additionally, the date, amount of time billed, and attorney's initials are not protected. <b>Thus, the Custodian unlawfully redacted</b>



				<b>the entry and must disclose same.</b>
30.	Invoice No. 26316: November 14, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding draft correspondence re: proposed ordinance</li> <li>• Amount of time spent, total charge and attorney's initials</li> </ul>	Not responsive to the Complainant's OPRA request.	Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See ACLU, 435 N.J. Super. at 540-541; Hyland, GRC 2012-227 et seq.</i> Additionally, the date, amount of time billed, and attorney's initials are not protected. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>
31.	Invoice No. 26316: November 28, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding correspondence re: proposed ordinance</li> <li>• Amount of time spent, total charge and attorney's initials.</li> </ul>	Not responsive to the Complainant's OPRA request.	Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See ACLU, 435 N.J. Super. at 540-541; Hyland, GRC 2012-227 et seq.</i> Additionally, the date, amount of time billed, and attorney's initials are not protected. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>
32.	Invoice No. 26316: December 5, 2013, entry.	<ul style="list-style-type: none"> <li>• Date</li> <li>• Description of work conducted by attorney regarding</li> </ul>	Not responsive to the Complainant's OPRA request.	Redacting information "not responsive to" a request is not a lawful basis to deny

		<p>telephone call with Township for various issues and revision of proposed ordinance</p> <ul style="list-style-type: none"> <li>• Amount of time spent, total charge and attorney's initials.</li> </ul>		<p>access to records under OPRA. <i>See</i> <u>ACLU, 435 N.J. Super.</u> at 540-541; <u>Hyland</u>, GRC 2012-227 <i>et seq.</i></p> <p>Additionally, the date, amount of time billed, and attorney's initials are not protected.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
33.	Invoice No. 26316: December 6, 2013, entry.	<ul style="list-style-type: none"> <li>• Description of work conducted by attorney regarding review of correspondence from other parties in ongoing litigation</li> <li>• Amount of time spent, total charge, and attorney's initials.</li> </ul>	<p>Attorney-client privileged information regarding pending litigation. <u>N.J.S.A. 47:1A-1.1.</u></p> <p>Not responsive to the Complainant's OPRA request.</p>	<p>The redacted information does not fall within the attorney-client privilege. The information is general enough that it does not reveal any legal advice or strategy.</p> <p>Additionally, the amount of time billed, and attorney's initials are not protected under this privilege.</p> <p><b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b></p>
34.	Invoice No. 26316: December 9, 2013, entry.	<ul style="list-style-type: none"> <li>• Description of work conducted by attorney regarding telephone calls with Township re: proposed ordinance.</li> <li>• Amount of time spent, total charge, and attorney's</li> </ul>	Not responsive to the Complainant's OPRA request.	<p>Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU, 435 N.J. Super.</u> at 540-541; <u>Hyland</u>, GRC 2012-227 <i>et seq.</i></p> <p>Additionally, the</p>

		initials		amount of time billed and attorney's initials are not protected. <b>Thus, the Custodian unlawfully redacted the entry and must disclose same.</b>
35.	Invoice No. 26316: Additional billing and totals	Total numbers of billings, additional time, and balances	Not responsive to the Complainant's OPRA request.	Redacting information "not responsive to" a request is not a lawful basis to deny access to records under OPRA. <i>See</i> <u>ACLU, 435 N.J. Super. at 540-541; Hyland, GRC 2012-227 et seq.</u> <b>Thus, the Custodian unlawfully redacted this information and must disclose same.</b>

Thus, the Custodian has unlawfully denied access to a majority of the redacted material and must disclose same in accordance with the table above.

**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 complied with the Council's January 30, 2015, Interim Order because she responded in the prescribed time frame, providing nine (9) copies of the responsive invoices (with and without redactions) and simultaneously provided certified confirmation of compliance to the Executive Director.
2. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *in camera* examination set forth in the above table within five (5) business days from receipt of this Order and**

**simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.<sup>7</sup>**

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  
Communications Specialist/Resource Manager

Reviewed By: Joseph D. Glover  
Executive Director

April 21, 2015

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<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.



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

January 30, 2015 Government Records Council Meeting

Salvatore J. Sorce  
Complainant

Complaint No. 2014-109

v.

Stafford Township (Ocean)  
Custodian of Record

At the January 30, 2015 public meeting, the Government Records Council ("Council") considered the January 20, 2015 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian's failure to respond immediately to the Complainant's OPRA request for invoices results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5(e). See Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007). However, the GRC declines to order disclosure of responsive records because the Custodian disclosed same to the Complainant on March 13, 2014.
2. Because the Custodian failed to provide a specific lawful basis for redactions made to the Starkey invoices, the Custodian's response to the Complainant's OPRA request is insufficient. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008). See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-204 *et seq.* (Interim Order dated October 26, 2010).
3. The GRC must conduct an *in camera* review of the responsive Starkey invoices to determine the validity of the Custodian's assertion that the redacted portions of same are subject to attorney-client privilege exemption under OPRA. See Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005); N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 3 above), nine (9) copies of the redacted records, a document or redaction index<sup>2</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>3</sup> that the records**

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

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

<sup>3</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

**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.**

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

Interim Order Rendered by the  
Government Records Council  
On The 30<sup>th</sup> Day of January, 2015

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: February 3, 2015**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 30, 2015 Council Meeting**

**Salvatore J. Sorce<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-109**

v.

**Stafford Township (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Inspection and hardcopies via pickup of:

1. Invoices for CME Consulting & Municipal Engineers (“CME”) regarding the Stafford Mitigation Property (“Property”), block 54, lots 21.02 and 26 and other Walters Group entities since January 2013.
2. Invoices for Christopher Connors, Esq., Stafford Township (“Township”) attorney, regarding the Property, other Walters Group entities and Township mitigation since January 2013.
3. Invoices for Dasti, Murphy, McGuckin, Ulaky, Koutsouirs & Connors (“Dasti”) regarding Walters Group entities, the Township and Township mitigation since January 2013.
4. Invoices for Kevin N. Starkey, Esq., Gilmore & Monahan (“Gilmore”), regarding Walters Group entities, the Township and Township mitigation since January 2013.

**Custodian of Record:** Bernadette M. Park

**Request Received by Custodian:** February 7, 2014

**Response Made by Custodian:** March 10, 2014

**GRC Complaint Received:** March 11, 2014

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

**Request and Response:**

On February 7, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 10, 2014, James Moran, Township Administrator, responded in writing on behalf of the Custodian stating that the

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

<sup>2</sup> Represented by Christopher J. Dasti, Esq., of Dasti, Murphy, McGuckin, Ulaky, Koutsouirs & Connors (Forked River, NJ).

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

Finance Department was in the process of retrieving and compiling responsive records and that the Township planned to respond by the end of March 2014. Further, Mr. Moran noted that neither Dasti nor Gilmore were involved in the mitigation matter because Mr. Starkey is assigned to same. Mr. Moran also stated that CME was retained for engineering and not legal services; however, he has directed the Finance Department to compile invoices relative to the matter in the interest of cooperation.

#### Denial of Access Complaint:

On March 11, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he went to the Township to advise the Custodian that thirty (30) days had passed since he submitted his request to which the Custodian advised that she gave Mr. Moran the OPRA request.

The Complainant asserted that the Custodian’s failure to timely respond within seven (7) business days resulted in a “deemed” denial of his request. Further, the Complainant argued that such a failure constituted a knowing and willful violation of OPRA.

#### Supplemental Responses

On March 13, 2014, Mr. Moran again responded providing four (4) invoices from Mr. Starkey (with redactions) and seven (7) pages of CME purchase orders.

On March 18, 2014, the Complainant e-mailed the GRC advising that he received a response from the Township via U.S. mail on March 15, 2014. The Complainant disputed the redactions made to the Starkey invoices, arguing that the Township failed to provide a specific lawful basis for same.<sup>4</sup> The Complainant contended that the requested information is essential to determining whether the Walters Group surreptitiously passed the cost of constructing a solar farm on green acres land onto the taxpayers.

#### Statement of Information:

On March 21, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 7, 2014. The Custodian averred that her response was delayed due to lack of staffing issues and inclement weather events. The Custodian certified that the Complainant ultimately received all responsive records on March 13, 2014.

The Custodian argued that the responsive Starkey invoices were redacted to protect attorney-client privileged information exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super. 191 (October 28, 2002); Fisher v. Div. of Law, 400 N.J. Super. 61 (App. Div. 2008).

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<sup>4</sup> The Complainant attached letters for additional records and clarification of questions he had regarding the project.



### Additional Submissions

On March 21, 2014, the Complainant reiterated that the Custodian's failure to respond over thirty (30) days after receipt of the request constitutes a knowing and willful violation of OPRA.

### Analysis

#### Immediate Access

OPRA further provides that "[i]mmediate access ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiation agreements and individual employment contracts, and public employee salary and overtime information." N.J.S.A. 47:1A-5(e).

In Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that "immediate access language of OPRA (N.J.S.A. 47:1A-5(e)) suggest that the Custodian was still obligated to immediately notify the Complainant. . ." Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request.

Here, the Complainant's OPRA request sought invoices from CME and various law firms regarding the Property and other Walter Group entities for a little over a period of a year. Because the Complainant sought immediate access records, the Custodian was required to, at the very least, respond immediately regardless of whether she could actually provide records at that time. The Custodian's failure to do so results in a violation of OPRA.

Therefore, the Custodian's failure to respond immediately to the Complainant's OPRA request for invoices results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5(e). See Herron, GRC 2006-178 (February 2007). However, the GRC declines to order disclosure of responsive records because the Custodian disclosed same to the Complainant on March 13, 2014.

#### Sufficiency of Response

OPRA provides that "[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor." N.J.S.A. 47:1A-5(g). Thus, OPRA requires that, when providing access to redacted records, a custodian shall provide a specific lawful basis for redactions.

In Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008), the custodian responded in a timely manner providing redacted records to the complainant; however, the custodian failed to provide a specific legal basis for said redactions. The Council held that "[t]he Custodian's response was legally insufficient under OPRA because

he failed to provide a written response setting forth a detailed and lawful basis for each redaction ...” Id. at 4. The Council further held that “the Custodian violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and has not borne his burden of proving the denial of access to the redacted portions was authorized by law. . .” Id. at 5. *See* Schwarz v. NJ Dep’t of Human Serv., GRC Complaint No. 2004-60 (February, 2005)(setting forth the proposition that specific citations to the law that allows a denial of access are required at the time of the denial); Renna v. Union Cnty. Improvement Auth., GRC Complaint No. 2008-86 (May 2010)(noting that N.J.S.A. 47:1A-5(g) requires a custodian of record to indicate the specific basis for noncompliance).

In this matter, in addition to the Custodian’s failure to respond immediately, she failed to provide a specific lawful basis for the redactions contained in the Starkey invoices upon providing access to same. It was not until the submission of the SOI that the Custodian argued that the redactions were based on the attorney-client privilege exemption found in N.J.S.A. 47:1A-1.1.

Therefore, because the Custodian failed to provide a specific lawful basis for redactions made to the Starkey invoices, the Custodian’s response to the Complainant’s OPRA request is insufficient. N.J.S.A. 47:1A-5(g); Paff, GRC 2007-209. *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-204 *et seq.* (Interim Order dated October 26, 2010).

### **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.

In Paff v. NJ Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council<sup>5</sup> that accepted the custodian’s legal conclusion for the denial of access without further review. The Appellate Division noted 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 stated that:

[OPRA] 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.

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<sup>5</sup> Paff v. NJ Dep’t of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

Id. at 355.

Further, the Court found 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.

Here, the Complainant disputed the redactions present on the Starkey invoices. However, in the SOI, the Custodian argued that the invoices were properly redacted to exclude attorney-client privileged information. N.J.S.A. 47:1A-1.1. However, the GRC must review same in order to determine the full applicability of the attorney-client privilege to the redacted portions of the responsive invoices. Such an action is not uncommon, as the GRC will routinely perform an *in camera* review in similar circumstances. Rivera v. City of Camden (Camden), GRC Complaint No. 2010-182 (Interim Order January 31, 2012); Skidmore v. Lebanon Twp. (Hunterdon), GRC Complaint No. 2013-194 (Interim Order dated January 28, 2014).

Therefore, the GRC must conduct an *in camera* review of the responsive Starkey invoices to determine the validity of the Custodian's assertion that the redacted portions of same are subject to attorney-client privilege exemption under OPRA. See Paff, 379 N.J. Super. at 346; N.J.S.A. 47:1A-1.1.

### **Knowing & Willful**

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

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to respond immediately to the Complainant's OPRA request for invoices results in a violation of OPRA's immediate access provision at N.J.S.A. 47:1A-5(e). See Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007). However, the GRC declines to order disclosure of responsive records because the Custodian disclosed same to the Complainant on March 13, 2014.

2. Because the Custodian failed to provide a specific lawful basis for redactions made to the Starkey invoices, the Custodian's response to the Complainant's OPRA request is insufficient. N.J.S.A. 47:1A-5(g); Paff v. Borough of Lavallette, GRC Complaint No. 2007-209 (Interim Order dated June 25, 2008). *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-204 *et seq.* (Interim Order dated October 26, 2010).
3. The GRC must conduct an *in camera* review of the responsive Starkey invoices to determine the validity of the Custodian's assertion that the redacted portions of same are subject to attorney-client privilege exemption under OPRA. *See* Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005); N.J.S.A. 47:1A-1.1.
4. **The Custodian must deliver<sup>6</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 3 above), nine (9) copies of the redacted records, a document or redaction index<sup>7</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>8</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

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

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

January 20, 2014

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<sup>6</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>7</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>8</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."