



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

October 25, 2016 Government Records Council Meeting

Michael Doss
Complainant

Complaint No. 2014-149

v.

Borough of Paramus (Bergen)
Custodian of Record

At the October 25, 2016 public meeting, the Government Records Council (“Council”) considered the October 18, 2016 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that because the argument set forth in the Complainant’s exceptions is outweighed by the Administrative Law Judge’s finding of credible evidence adduced during the Office of Administrative Law hearing and because the Complainant has failed otherwise to provide any legal basis for the Council to reject the Administrative Law Judge’s findings, the Council accepts the Administrative Law Judge’s Initial Decision, dated August 4, 2016, which provides:

*I **CONCLUDE** that neither the custodian of records, nor any other employee of the Borough of Paramus, whether currently or previously employed, knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.*

*I further **CONCLUDE** that complainant is not a prevailing party pursuant to N.J.S.A. 47:1A-6.*

*It is hereby **ORDERED** that complaint is hereby **DISMISSED**; and, that complainant is not a prevailing party.*

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 25th Day of October, 2016

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: October 27, 2016

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
October 25, 2016 Council Meeting**

**Michael Doss¹
Complainant**

GRC Complaint No. 2014-149

v.

**Borough of Paramus (Bergen)²
Custodial Agency**

Records Relevant to Complaint:

Request dated March 10, 2014:

1. Sixteen (16) request items seeking correspondence, appended hereto as Exhibit A.
2. One (1) request item seeking financial disclosures for Paul Kaufman and R. LaBarberia.

Request dated March 21, 2014:

Financial disclosures for Paul Kaufman and R. LaBarberia for the years 2010 - 2014.

Custodian of Record: Annemarie Krusznis, Clerk

Requests Received by Custodian: March 10, 2014, and March 21, 2014

Responses Made by Custodian: March 17, 2014, and March 28, 2014

GRC Complaint Received: March 27, 2014

Background

February 24, 2015 Council Meeting:

At its February 24, 2015 public meeting, the Government Records Council (“Council”) considered the February 17, 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, found that:

1. The Custodian failed to comply with the terms of the Council’s January 30, 2015 Interim Order because the Custodian did not provide certified confirmation of compliance to the Executive Director that she disclosed to the Complainant the records ordered for disclosure in paragraph #2 of said Order within the time provided

¹ Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ). Mr. Luers entered his appearance on December 8, 2015, after the complaint was transmitted to the Office of Administrative Law.

² Represented by Justin D. Santagata, Esq., of Kaufman Semeraro & Leibman, LLP (Fort Lee, NJ).

for compliance or certified that said records are not maintained or kept on file by the Borough.

2. The Council's January 30, 2015 Interim Order is enforceable in the Superior Court if Complainant chooses that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law for the limited purposes described below, the Council emphasizes that the issue as to the disclosure of the records responsive to the request has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian violated OPRA due to the following: (a) she failed to submit the certification of compliance as directed by the Council; (b) of the records disclosed, which were only partially responsive to the request, the Custodian failed to disclose same within five (5) business days from receipt of the Council's Order; (c) she misled the Complainant by informing him, through Counsel, that she did not receive the Council's Order until February 10, 2015, when she knew or should have known that such statement was untrue; and (d) failed to disclose the records ordered for disclosure described in paragraph 2 of the Order. As such, the Custodian's actions appear to be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless, or unintentional. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Procedural History:

On February 25, 2015, the Council distributed its February 24, 2015, Interim Order to all parties. On March 10, 2015, the Custodian filed a request for reconsideration of the Council's February 24, 2015 Interim Order based on mistake. On May 26, 2015, the Council denied the Custodian's request for reconsideration. On July 22, 2015, the GRC transmitted the complaint to the Office of Administrative Law ("OAL").

On August 4, 2016, the Honorable Thomas R. Betancourt, Administrative Law Judge ("ALJ"), issued an Initial Decision in this matter. After finding that the Custodian, Annemarie Krusznis, Paul Kaufman and Richard La Barbiera were credible witnesses, the ALJ's Initial Decision provided as follows:

*I **CONCLUDE** that neither the custodian of records, nor any other employee of the Borough of Paramus, whether currently or previously employed, knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.*

*I further **CONCLUDE** that complainant is not a prevailing party pursuant to N.J.S.A. 47:1A-6.*

*It is hereby **ORDERED** that complaint is hereby **DISMISSED**; and, that complainant is not a prevailing party.*

On August 17, 2016, the twelfth (12th) day from the date the Initial Decision was mailed to the parties, the Complainant's Counsel filed written exceptions. Counsel argues only one point, namely that the Custodian should be penalized because the testimony adduced at trial proves that the Custodian knowingly and willfully violated OPRA and unreasonably denied access to records under the totality of the circumstances.

Counsel argues that the word "willful" is considered synonymous with such words as "voluntary," "deliberate," and "intentional" and refers to conduct that is not merely negligent (citations omitted). The Complainant's Counsel cites Z.T. v. Bernard's Twp. Bd. of Educ., GRC Complaint No. 2007-277 (April 2010) and Jung v. Borough of Roselle and Halloran v. Borough of Roselle, consolidated GRC Complaint Nos. 2007-299 and 2007-307 (December 2008), wherein the Council accepted the OAL's recommendations that the custodian be fined for willful misconduct.

Counsel further argues that the Custodian never took the Complainant's request seriously. Counsel states that "[b]ased on the record, as well as the Records Custodian's testimony, demeanor and credibility at trial, it's obvious that the Records Custodian made no effort to fulfill Petitioner's OPRA request." (E-2) Counsel argues that the Custodian was advised by the Borough Attorney to disclose the financial disclosure statements. Counsel argues that, although the Custodian therefore knew she had an obligation to do so, she did not disclose the records until after receipt of the Council's February 24, 2015 Interim Order. Counsel contends that upon receipt of the Interim Order, the Custodian panicked and disclosed the financial disclosure statements on March 9, 2015. Counsel asserts that the Council should vacate the ALJ's decision and impose a penalty on the Custodian.

On August 19, 2016, the GRC requested a 45 day extension of time for issuing the Final Decision. On August 29, 2016, OAL approved an extension of time until November 2, 2016, for the Council to render its Final Decision.

On August 29, 2016, the Custodian's Counsel responded to the Complainant's exceptions. Counsel first asserts that the Complainant improperly relies on the GRC's Interim Orders. Counsel argues that such Orders are only evidence of the Council's reasons for sending the matter to OAL and that the ALJ, whose decision turned on witness credibility, is the primary arbiter of the facts. Counsel next argues that the Complainant stipulated that his March 21, 2014 request was intended to be a clarification of his March 10, 2014 OPRA request. Accordingly, Counsel contends, the ALJ found that the Complainant was not denied the records he sought after the clarification. Counsel argues that, as such, there was no "unreasonable denial of access" for a willful violation of OPRA. Finally, Counsel states that the Complainant's characterization of what "willful" means is broad. Counsel contends that a fine may only be imposed when: (1) there is actual knowledge that the actions were wrongful; (2) there is a positive element of conscious wrongdoing; and (3) the actions result in unreasonable denial of access.³

³ In support of his response, the Custodian's Counsel attached a copy of the Custodian's post-hearing brief dated June 20, 2016.

Analysis

Adoption of the ALJ's Initial Decision dated August 4, 2016

The ALJ's findings of fact are entitled to deference from the GRC because they are based upon the ALJ's determination of the credibility of the parties. "The reason for the rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility." In the Matter of the Tenure Hearing of Tyler, 236 N.J. Super. 478, 485 (App. Div.), *certif. denied* 121 N.J. 615 (1990). The Appellate Division affirmed this principle, underscoring that, "under existing law, the [reviewing agency] must recognize and give due weight to the ALJ's unique position and ability to make demeanor-based judgments." Whasun Lee v. Board of Education of the Township of Holmdel, Docket No. A-5978-98T2 (App. Div. 2000), slip op. at 14. "When such a record, involving lay witnesses, can support more than one factual finding, it is the ALJ's credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole." Cavalieri v. Board of Trustees of Public Employees Retirement System, 368 N.J. Super. 527, 537 (App. Div. 2004).

The ultimate determination of the agency and the ALJ's recommendations must be accompanied by basic findings of fact sufficient to support them. State, Dep't of Health v. Tegnazian, 194 N.J. Super. 435 , 442-43 (App. Div. 1984). The purpose of such findings "is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefor." Id. at 443. Additionally, the sufficiency of evidence "must take into account whatever in the record fairly detracts from its weight"; the test is not for the courts to read only one side of the case and, if they find any evidence there, the action is to be sustained and the record to the contrary is to be ignored (citation omitted). St. Vincent's Hospital v. Finley, 154 N.J. Super. 24, 31 (App. Div. 1977).

Here, the Complainant's Counsel filed exceptions in a timely manner, arguing that the Custodian should be penalized because the testimony adduced at trial proves that the Custodian knowingly and willfully violated OPRA and unreasonably denied access to records under the totality of the circumstances. Counsel called the Custodian's demeanor and credibility into question and argued that, although the Custodian knew she had an obligation to do so, she did not disclose requested records until she panicked after she received the Council's February 24, 2015 Interim Order, which referred the complaint to OAL for a determination of whether she knowingly and willfully violated OPRA. The Complainant's Counsel asked the Council to reject the ALJ's Initial Decision and impose a penalty on the Custodian.

In the Initial Decision, the ALJ recited the stipulated facts and summarized the testimony. The ALJ also set forth a basis for determining the credibility of the witnesses and explained why he credited certain testimony. The ALJ further explained that he relied upon the stipulated facts in arriving at his conclusions. The ALJ's conclusions are consistent with those credibility determinations. Accordingly, the Council finds that it can ascertain which testimony the ALJ accepted as fact, and further, finds that those facts provide a reasonable basis for the ALJ's conclusions.

Therefore, because the argument set forth in the Complainant's exceptions is outweighed by the ALJ's finding of credible evidence adduced during the OAL hearing and because the Complainant has failed otherwise to provide any legal basis for the Council to reject the ALJ's findings, the Council accepts the ALJ's Initial Decision, dated August 4, 2016, which provides:

*I **CONCLUDE** that neither the custodian of records, nor any other employee of the Borough of Paramus, whether currently or previously employed, knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.*

*I further **CONCLUDE** that complainant is not a prevailing party pursuant to N.J.S.A. 47:1A-6.*

*It is hereby **ORDERED** that complaint is hereby **DISMISSED**; and, that complainant is not a prevailing party.*

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the argument set forth in the Complainant's exceptions is outweighed by the Administrative Law Judge's finding of credible evidence adduced during the Office of Administrative Law hearing and because the Complainant has failed otherwise to provide any legal basis for the Council to reject the Administrative Law Judge's findings, the Council accepts the Administrative Law Judge's Initial Decision, dated August 4, 2016, which provides:

*I **CONCLUDE** that neither the custodian of records, nor any other employee of the Borough of Paramus, whether currently or previously employed, knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.*

*I further **CONCLUDE** that complainant is not a prevailing party pursuant to N.J.S.A. 47:1A-6.*

*It is hereby **ORDERED** that complaint is hereby **DISMISSED**; and, that complainant is not a prevailing party.*

Prepared By: John E. Stewart

October 18, 2016

EXHIBIT A

A. Correspondences, emails, and letters (emails from Borough of Paramus email address and personal email address of the following):

1. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. August Greiner's email address "Agreiner@merail.com" for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

2. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. August Greiner's for the year 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

3. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. A. Tito Jackson for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage,*

council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.

4. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. Harry Tuvell for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdlez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

5. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. Richard LaBarbiera for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdlez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

6. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. Joseph Monaghan for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdlez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

7. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. Kevin Kelly for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Milke Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

8. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. Patrick McHale for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Milke Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

9. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Ms. C. Carpenter for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Milke Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

10. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Mr. Paul Kaufman for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council*

meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.

11. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Mr. Harry Tuvell for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarberia, Jorge, Nunez, Jorge Nunez, Evaristo Burdiaz Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

12. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Mr. A. Tito Jackson for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarberia, Jorge, Nunez, Jorge Nunez, Evaristo Burdiaz Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

13. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Mr. Joseph Monaghan for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarberia, Jorge, Nunez, Jorge Nunez, Evaristo Burdiaz Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking,*

visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.

14. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Mr. Kevin Kelly for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarberia, Jorge, Nunez, Jorge Nunez, Evaristo Burdiaz Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

15. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Mr. Patrick McHale for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarberia, Jorge, Nunez, Jorge Nunez, Evaristo Burdiaz Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

16. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Ms. C. Carpenter for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarberia, Jorge, Nunez, Jorge Nunez, Evaristo Burdiaz Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*



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

February 24, 2015 Government Records Council Meeting

Michael Doss
Complainant

Complaint No. 2014-149

v.

Borough of Paramus (Bergen)
Custodian of Record

At the February 24, 2015 public meeting, the Government Records Council (“Council”) considered the February 17, 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 failed to comply with the terms of the Council’s January 30, 2015 Interim Order because the Custodian did not provide certified confirmation of compliance to the Executive Director that she disclosed to the Complainant the records ordered for disclosure in paragraph #2 of said Order within the time provided for compliance or certified that said records are not maintained or kept on file by the Borough.
2. The Council’s January 30, 2015 Interim Order is enforceable in the Superior Court if Complainant chooses that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law for the limited purposes described below, the Council emphasizes that the issue as to the disclosure of the records responsive to the request has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.
3. The Custodian violated OPRA due to the following: (a) she failed to submit the certification of compliance as directed by the Council; (b) of the records disclosed, which were only partially responsive to the request, the Custodian failed to disclose same within five (5) business days from receipt of the Council’s Order; (c) she misled the Complainant by informing him, through Counsel, that she did not receive the Council’s Order until February 10, 2015, when she knew or should have known that such statement was untrue; and (d) failed to disclose the records ordered for disclosure described in paragraph 2 of the Order. As such, the Custodian’s actions appear to be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the



Custodian knowingly and willfully violated OPRA and unreasonably denying access under the totality of the circumstances.

Interim Order Rendered by the
Government Records Council
On The 24th Day of February, 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 25, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
February 24, 2015 Council Meeting**

**Michael Doss¹
Complainant**

GRC Complaint No. 2014-149

v.

**Borough of Paramus (Bergen)²
Custodial Agency**

Records Relevant to Complaint:

Request dated March 10, 2014:

1. Sixteen (16) request items seeking correspondence, appended hereto as Exhibit A.
2. One (1) request item seeking financial disclosures for Paul Kaufman and R. LaBarberia.

Request dated March 21, 2014:

Financial disclosures for Paul Kaufman and R. LaBarberia for the years 2010 - 2014.

Custodian of Record: Annemarie Krusznis, Clerk

Requests Received by Custodian: March 10, 2014 and March 21, 2014

Responses Made by Custodian: March 17, 2014 and March 28, 2014

GRC Complaint Received: March 27, 2014

Background

January 30, 2015 Council Meeting

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, found that:

1. Because the Complainant’s request for request items numbered 1 through 16 is overly broad and fails to seek identifiable government records, the request is invalid under OPRA and the Custodian has not unlawfully denied access to the requested records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Burke v.

¹ No legal representation listed on record.

² Represented by Justin D. Santagata, Esq., of Kaufman Semeraro & Leibman, LLP (Fort Lee, NJ).

Brandes, 429 N.J. Super. 169, 172, 176 (App. Div. 2012). *See also* Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

2. Because the Complainant's OPRA request for Financial Disclosure Statements for Messrs. LaBarbiera and Kaufman is valid, the Custodian must disclose to the Complainant all such records maintained or kept on file by the Borough. N.J.S.A. 47:1A-1. *See also* Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012).
3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. If some or all of the requested records are not maintained or kept on file by the Borough, the Custodian shall provide a certification to that effect to the Executive Director within the time allowed for compliance.**
4. Because the Complainant's cause of action for the request dated March 21, 2014, was not ripe at the time of the filing of this complaint; that is, the Complainant verified his complaint before the statutorily mandated seven (7) business day time period provided for the Custodian to respond to the request had expired, the complaint as it pertains to this request is materially defective and therefore should be dismissed. *See* Sallie v. NJ Dep't of Banking and Ins., GRC Complaint No. 2007- 226 (April 2009).
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.

Procedural History:

On February 3, 2015, the Council distributed its January 30, 2015 Interim Order ("Order") to all parties. On February 4, 2014, the Custodian's Counsel sent a letter to the GRC wherein he stated that the Borough of Paramus was in receipt of the Order and that per the Custodian's prior certification submitted to the GRC, the records ordered for disclosure by the Council had already been disclosed to the Complainant.³ The Custodian's Counsel identified these records as "[h]ard copies of full 'financial disclosure statements 'for 2010 through 2012.'" Counsel also stated that for 2013 the signature page was disclosed because the statements were filed online and only the signature page was kept on file. Counsel stated that no 2014 financial disclosure statements had been filed at the time of the Complainant's request. Counsel stated

³ The Custodian's Counsel attached to his letter a copy of the Custodian's certification that she had previously submitted to the GRC with her April 29, 2014 Statement of Information. The certification is dated April 24, 2013 (sic) and contains as attachments copies of Financial Disclosure Statements for Richard LaBarbiera for the years 2010 and 2011 and copies of Financial Disclosure Statements for Paul Kaufman for the years 2010 and 2012. Also attached is a copy of an electronic filing receipt for Richard LaBarbiera's 2013 Financial Disclosure Statement and a copy of a transmittal e-mail from Stephanie Evans to the Complainant dated April 2, 2014.

that the Custodian was again disclosing to the Complainant the records that had already been given to him.

By letter dated February 11, 2015, the Custodian's Counsel notified the Complainant that the Borough of Paramus received the Council's Order on February 10, 2015, and that the Custodian was disclosing additional copies of Financial Disclosure Statements for Richard LaBarbiera and Paul Kaufman for the years 2010 and 2012.

Analysis

Compliance

On January 30, 2015, the Council ordered the above-referenced compliance. 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. Therefore, compliance was due on or before February 10, 2014.

The Custodian failed to provide certified confirmation of compliance that she disclosed to the Complainant the records set forth in paragraph #2 of the Council's Order within the time provided. The Custodian, through Counsel, transmitted to the GRC a copy of a certification that she had previously submitted to the GRC with her April 29, 2014 Statement of Information. In that certification the Custodian only addressed the Complainant's request for correspondence, which consisted of request items numbered 1 through 16. The Custodian failed to address the balance of the request which sought the Financial Disclosure Statements for Mr. Paul Kaufman and Mr. R. LaBarbiera; however, this is the specific portion of the request that the Council ordered to be disclosed. The Custodian also certified that she provided the Complainant with financial disclosures for 2010 through 2013 that the Complainant sought in his March 21, 2014 request.⁴ However, the March 21, 2014 request was dismissed by the Council because it was unripe. Accordingly, the copy of the Custodian's old certification was not responsive in any respect to the Council's Order.

The Council found that the segment of the Complainant's March 10, 2014 request seeking Financial Disclosure Statements for Messrs. LaBarbiera and Kaufman was a valid request, and as such ordered the Custodian to disclose to the Complainant "all such records maintained or kept on file by the Borough." This request was not limited to a date range like the Complainant's March 21, 2014 request. In fact, the GRC emphasized this in the Findings and Recommendations of the Executive Director, which were incorporated into the Council's Order, by stating that although the Complainant failed to provide a date or range of dates for the requested Financial Disclosure Statements, the request was not overly broad because it was confined to a specific record which was clearly identified. The GRC cited the court's decision in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) in support of their conclusion. So, unlike the Complainant's March 21, 2014 request, his March 10, 2014 request for Financial Disclosure Statements for Messrs. LaBarbiera and Kaufman did not have a start date; therefore, the Council expected the Custodian to disclose *all* Financial Disclosure Statements for those two officials, not just those that were prepared in 2010 or later. Moreover, the Council amplified its

⁴ The Custodian certified that the 2014 disclosures had not been filed as of the date of request.

Order by informing the Custodian that “[i]f some or all of the requested records are not maintained or kept on file by the Borough, the Custodian shall provide a certification to that effect to the Executive Director within the time allowed for compliance.” The Custodian, however, never disclosed any Financial Disclosure Statements which were made for the two officials prior to 2010, or otherwise certified that said records are not maintained or kept on file by the Borough.

To the extent the Custodian did comply with the Order, she failed to do so in a timely manner. The evidence of record reveals that of the records disclosed, which were only partially responsive to the request, the Custodian failed to disclose same within five (5) business days from receipt of the Council’s Order. When the Custodian disclosed records to the Complainant on February 11, 2015, she informed him through Counsel that the Order was “received yesterday.” This statement was not true and it is important because if the Custodian received the Council’s Order on February 10, 2015, compliance with same would not have been due until February 18, 2015; therefore the Complainant was misled to believe that the Custodian was complying with the Order in a timely manner. However, the evidence of record reveals that the GRC distributed the decision to all parties, including the Custodian and Custodian’s Counsel, via e-mail and regular mail on February 3, 2015. Moreover, the Custodian’s Counsel in his letter to the GRC dated February 4, 2015 stated that the Borough of Paramus was in receipt of the Order at that time. Therefore, the Custodian knew or should have known that the statement informing the Complainant that the Order was received on February 10, 2015 was untrue.

Therefore, the Custodian failed to comply with the terms of the Council’s January 30, 2015 Interim Order because the Custodian did not provide certified confirmation of compliance to the Executive Director that she disclosed to the Complainant the records ordered for disclosure in paragraph #2 of said Order within the time provided for compliance or certified that said records are not maintained or kept on file by the Borough.

Council’s January 30, 2015 Interim Order is Enforceable

“The Council shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.” N.J.A.C. 5:105-2.9(c). The Council’s January 30, 2015 Interim Order is enforceable in the Superior Court if Complainant chooses that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law (“OAL”) for the limited purposes described below, the Council emphasizes that the issue as to the disclosure of the records responsive to the request has already been determined by the Council, and thus is not an outstanding issue before the OAL.

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 (Berg); 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 violated OPRA due to the following: (a) she failed to submit the certification of compliance as directed by the Council; (b) of the records disclosed, which were only partially responsive to the request, the Custodian failed to disclose same within five (5) business days from receipt of the Council’s Order; (c) she misled the Complainant by informing him, through Counsel, that she did not receive the Council’s Order until February 10, 2015, when she knew or should have known that such statement was untrue; and (d) she failed to disclose the records ordered for disclosure described in paragraph 2 of the Order. As such, the Custodian’s actions appear to be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denying 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 terms of the Council’s January 30, 2015 Interim Order because the Custodian did not provide certified confirmation of compliance to the Executive Director that she disclosed to the Complainant the records ordered for disclosure in paragraph #2 of said Order within the time provided for compliance or certified that said records are not maintained or kept on file by the Borough.
2. The Council’s January 30, 2015 Interim Order is enforceable in the Superior Court if Complainant chooses that option. R. 4:67-6. As this complaint should be referred to the Office of Administrative Law for the limited purposes described below, the Council emphasizes that the issue as to the disclosure of the records responsive to the

request has already been determined by the Council, and thus is not an outstanding issue before the Office of Administrative Law.

3. The Custodian violated OPRA due to the following: (a) she failed to submit the certification of compliance as directed by the Council; (b) of the records disclosed, which were only partially responsive to the request, the Custodian failed to disclose same within five (5) business days from receipt of the Council's Order; (c) she misled the Complainant by informing him, through Counsel, that she did not receive the Council's Order until February 10, 2015, when she knew or should have known that such statement was untrue; and (d) failed to disclose the records ordered for disclosure described in paragraph 2 of the Order. As such, the Custodian's actions appear to be intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. Therefore, this complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denying access under the totality of the circumstances.

Prepared By: John E. Stewart

Approved By: Dawn R. SanFilippo
Deputy Executive Director

February 17, 2015



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

Michael Doss
Complainant

Complaint No. 2014-149

v.

Borough of Paramus (Bergen)
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. Because the Complainant's request for request items numbered 1 through 16 is overly broad and fails to seek identifiable government records, the request is invalid under OPRA and the Custodian has not unlawfully denied access to the requested records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Burke v. Brandes, 429 N.J. Super. 169, 172, 176 (App. Div. 2012). *See also* Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
2. Because the Complainant's OPRA request for Financial Disclosure Statements for Messrs. LaBarbiera and Kaufman is valid, the Custodian must disclose to the Complainant all such records maintained or kept on file by the Borough. N.J.S.A. 47:1A-1. *See also* Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012).
3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.² If some or all of the requested records are not maintained or kept on file by the Borough, the Custodian shall provide a certification to that effect to the Executive Director within the time allowed for compliance.**

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.

4. Because the Complainant's cause of action for the request dated March 21, 2014, was not ripe at the time of the filing of this complaint; that is, the Complainant verified his complaint before the statutorily mandated seven (7) business day time period provided for the Custodian to respond to the request had expired, the complaint as it pertains to this request is materially defective and therefore should be dismissed. *See Sallie v. NJ Dep't of Banking and Ins.*, GRC Complaint No. 2007- 226 (April 2009).
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 30th 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**

**Michael Doss¹
Complainant**

GRC Complaint No. 2014-149

v.

**Borough of Paramus (Bergen)²
Custodial Agency**

Records Relevant to Complaint:

Request dated March 10, 2014:

1. Sixteen (16) request items seeking correspondence, appended hereto as Exhibit A.
2. One (1) request item seeking financial disclosures for Paul Kaufman and R. LaBarberia.

Request dated March 21, 2014:

Financial disclosures for Paul Kaufman and R. LaBarberia for the years 2010 - 2014.

Custodian of Record: Annemarie Krusznis, Clerk

Requests Received by Custodian: March 10, 2014 and March 21, 2014

Responses Made by Custodian: March 17, 2014 and March 28, 2014

GRC Complaint Received: March 27, 2014

Background³

Requests and Responses:

Request dated March 10, 2014

On March 10, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Complainant requested that the records be sent via U.S. Mail or e-mail. On March 17, 2014, the fifth (5th) business day following receipt of said request, the Custodian responded in writing informing the Complainant that with respect to request items 1 through 16, the Borough has no records “...made, maintained or kept on file in the course of Paramus’ official business which is the definition of a government record...” The Custodian informed the Complainant that with respect to request item 17,

¹ No legal representation listed on record.

² Represented by Justin D. Santagata, Esq., of Kaufman Semeraro & Leibman, LLP (Fort Lee, NJ).

³ 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.

Financial Disclosure Statements are filed electronically through the New Jersey Department of Community Affairs.

Request dated March 21, 2014

On March 21, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Complainant requested that the records be sent via e-mail. On March 28, 2014, the fifth (5th) business day following receipt of said request, the Custodian responded via e-mail informing the Complainant, “...please see the information requested in your OPRA request dated March 21, 2014.” The Custodian attached “OPRA-Michael Doss 03-28-14.pdf” to the response.⁴

Denial of Access Complaint:

On March 27, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”) which he verified on March 26, 2014. The Complainant asserts that he filed OPRA requests on March 10, 2014 and March 21, 2014. The Complainant states that his requests were denied; the Complainant also states that “some items not replied (sic) or denied.”

Statement of Information:

On April 25, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she responded to the Complainant’s March 10, 2014 request on March 17, 2014, and that she responded to the Complainant’s March 21, 2014 request on March 28, 2014.

The Custodian certifies that the Complainant’s March 10, 2014 request sought extensive correspondence between Mayor Richard LaBarbiera and several other parties as well as between Paramus Attorney Paul Kaufman, Esq. and several other parties. The Custodian certifies that she spoke with both Mr. LaBarbiera and Mr. Kaufman and asked them to search their records for the requested correspondence; however, both officials informed the Custodian that there was no correspondence responsive to the request that was a “government record” or a “public record.”⁵

The Custodian’s Counsel supported the Custodian’s statement by asserting that the Complainant requested correspondence for Paramus Mayor Richard LaBarbiera and Paramus Attorney Paul Kaufman which contained many search terms, but that the search terms relate to a redevelopment project in Bogota in which Paramus is not involved; therefore, there was no correspondence responsive to the request that was a government or public record. The Custodian

⁴ This attachment, containing nine (9) pages of Financial Disclosure Statements, was included in the Statement of Information.

⁵ The Custodian’s Counsel states that the search for a “government record” was for a record as defined in OPRA; whereas a “public record” is a record under the common law right of access. Counsel states that the Custodian responded to the Complainant under both OPRA and the common law right of access.

certifies that on March 17, 2014, she informed the Complainant that there were no government records responsive to his request.⁶

Additional Submissions:

On June 19, 2014, the Complainant submitted a response to the SOI. The Complainant asserts with respect to his March 10, 2014 request for correspondence from Messrs. LaBarbiera and Kaufman that Paramus business correspondence may be mixed with other business correspondence. The Complainant also contends that Paramus e-mail addresses may be used for business outside of the municipality. The Complainant also addresses the Custodian's response to his March 21, 2014 request, but his statements regarding that request are not relevant to the adjudication of this complaint.

Analysis

Unlawful Denial of Access

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

Request dated March 10, 2014.

The Complainant's March 10, 2014 request seeks seventeen (17) items. In each of the first sixteen (16) items the Complainant is seeking "correspondences, emails and letters" between various named individuals that contain certain words. The Complainant then lists upwards of eighty (80) applicable words that he wants included in the search for each of the sixteen (16) items. The Complainant did provide a timeframe for the records, which was predominantly for the years 2013 and 2014. The seventeenth item requests "financial disclosures for Paul Kaufman and R. LaBarberia."

In denying the first sixteen (16) request items, the Custodian asserted that the records were not government records and, in reaching that conclusion, relied largely upon the Complainant's requested search terms which the Custodian determined were related to a redevelopment project in Bogota. The fact that a project was being undertaken in another municipality, however, does not necessarily remove every requested record from the ambit of a government record. This is especially so when the correspondence requested was addressed to, or created by, the mayor and/or the city attorney. It is unnecessary for the Council to analyze whether the requested records are government records as defined by OPRA, however, because the request for the first sixteen (16) items is overly broad.

⁶ The Custodian failed to address the requested financial disclosures for Mr. Kaufman and Mr. LaBarberia in the SOI. The Custodian did address the Complainant's March 21, 2014 request in the SOI but her statements regarding that request are not relevant to the adjudication of this complaint.

The New Jersey Appellate Division has held that “[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records ‘readily accessible for inspection, copying, or examination.’* N.J.S.A. 47:1A-1.” MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005). (Emphasis added). The Court reasoned that:

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

Id. at 549 (emphasis added).

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt In short, OPRA does not countenance open-ended searches of an agency's files.” Id. (emphasis added). See also Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005),⁷ NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In Elcavage v. Twp. of West Milford (Passaic), GRC Complaint No. 2009-07 *et seq.* (April 2010), the GRC set forth that an OPRA request for e-mails must contain: “(1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof.” Id. at 5 (emphasis in original). The Custodian also noted that the GRC applied the same criteria to other forms of correspondence. See Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order May 24, 2011)

More recently, the Appellate Division has found a request for “EZ Pass benefits afforded to retirees of the Port Authority, including all . . . correspondence between the Office of the Governor . . . and the Port Authority . . .” to be valid under OPRA because it “was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information . . . [and] was limited to particularized identifiable government records, namely, correspondence with another government entity, rather than information generally.” Burke v. Brandes, 429 N.J. Super. 169, 172, 176 (App. Div. 2012).

⁷ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

Here, the Complainant's OPRA request sought "correspondences, emails and letters" between various named individuals that contain upwards of eighty (80) applicable words. Even though the Complainant's request items included the requisite criteria set forth in Elcavage, the inclusion of eighty (80) applicable search terms is contrary to the Appellate Division's holding in Burke. Whereas the request at issue in Burke, identified a particular subject (EZ Pass benefits for retirees), the Complainant's request items here identify numerous terms, most very generic and others a little more specific (from "approvals" and "loans" to "297 Palisades Avenue"). In order to fulfill this type of request, the Custodian would not be limited to just electronically searching e-mails by the search terms provided but would also have to research all Borough files for a period greater than fourteen (14) months in an effort to locate all correspondence responsive to the request. Given all the search words for each of the sixteen (16) request items this would be a daunting task, and one not required under the law because "...OPRA does not countenance open-ended searches of an agency's files." MAG at 549. As such, the Complainant's request is invalid under OPRA.

Accordingly, because the Complainant's request for request items numbered 1 through 16 is overly broad and fails to seek identifiable government records, the request is invalid under OPRA and the Custodian has not unlawfully denied access to the requested records. MAG, 375 N.J. Super. 534; Bent, 381 N.J. Super. 30; New Jersey Builders, 390 N.J. Super. at 166; Burke, 429 N.J. Super. 169. *See also* Schuler, GRC 2007-151.

Request item number 17 sought financial disclosures for Paul Kaufman and R. LaBarberia. The Complainant failed to provide a date or range of dates for the requested records; however, the request is not overly broad because it was confined to a specific record which was clearly identified. A Financial Disclosure Statement is a document required annually of all local government officers pursuant to N.J.S.A. 40A:9-22.1 et seq. Therefore, not unlike Burke, 429 N.J. Super. 169, this request was limited to a particularized identifiable government record. As such, the request is valid.

The Custodian in her response to this request item informed the Complainant that Financial Disclosure Statements are filed electronically through the New Jersey Department of Community Affairs. However, notwithstanding this explanation, if the Borough maintains or keeps the records on file, the Custodian must disclose them to the Complainant.

Accordingly, because the Complainant's OPRA request for Financial Disclosure Statements for Messrs. LaBarbiera and Kaufman is valid, the Custodian must disclose to the Complainant all such records maintained or kept on file by the Borough. N.J.S.A. 47:1A-1. *See also* Burke 429 N.J. Super. 169.

Request dated March 21, 2014.

With the exception of immediate access records, OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). Further, a custodian's response, either granting or denying such access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).

Here, there is no dispute between the parties that the Complainant provided this request to the Custodian on March 21, 2014. Financial Disclosure Statements are not immediate access records. The Custodian certified that she responded in writing to the request on March 28, 2014, which was the fifth (5th) business day following the Custodian's receipt of the request. However, before the Custodian responded to this request, the evidence of record reveals the Complainant verified the Denial of Access Complaint on March 26, 2014, and submitted the complaint to the GRC on March 27, 2014.

In Sallie v. NJ Dep't of Banking and Ins., GRC Complaint No. 2007- 226 (April 2009), the evidence of record revealed that the complainant verified the complaint three business days after the date of request. The Council, in dismissing the complaint, found that the cause of action was not ripe at the time the complainant verified the complaint because the statutorily mandated time period for the custodian's response had not yet expired.

Here, as in Sallie, GRC 2007- 226, the Complainant verified and filed the complaint with the GRC prior to the expiration of the statutorily mandated seven (7) business day time period provided for the Custodian to respond to the request. N.J.S.A. 47:1A-5(i).

Therefore, because the Complainant's cause of action for the request dated March 21, 2014, was not ripe at the time of the filing of this complaint; that is, the Complainant verified his complaint before the statutorily mandated seven (7) business day time period provided for the Custodian to respond to the request had expired, the complaint as it pertains to this request is materially defective and therefore should be dismissed. *See Sallie*, GRC 2007- 226.

The GRC acknowledges that the Custodian disclosed records responsive to the March 21, 2014 request; however, it will not address this issue because the complaint is not properly before the Council.

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. Because the Complainant's request for request items numbered 1 through 16 is overly broad and fails to seek identifiable government records, the request is invalid under OPRA and the Custodian has not unlawfully denied access to the requested records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Burke v. Brandes, 429 N.J. Super. 169, 172, 176 (App. Div. 2012). *See also Schuler v. Borough of Bloomsbury*, GRC Complaint No. 2007-151 (February 2009).

2. Because the Complainant's OPRA request for Financial Disclosure Statements for Messrs. LaBarbiera and Kaufman is valid, the Custodian must disclose to the Complainant all such records maintained or kept on file by the Borough. N.J.S.A. 47:1A-1. *See also* Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012).
3. **The Custodian shall comply with paragraph #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁸ to the Executive Director.⁹ If some or all of the requested records are not maintained or kept on file by the Borough, the Custodian shall provide a certification to that effect to the Executive Director within the time allowed for compliance.**
4. Because the Complainant's cause of action for the request dated March 21, 2014, was not ripe at the time of the filing of this complaint; that is, the Complainant verified his complaint before the statutorily mandated seven (7) business day time period provided for the Custodian to respond to the request had expired, the complaint as it pertains to this request is materially defective and therefore should be dismissed. *See* Sallie v. NJ Dep't of Banking and Ins., GRC Complaint No. 2007- 226 (April 2009).
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: John E. Stewart, Esq.

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

January 20, 2015

⁸ "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."

⁹ 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.

EXHIBIT A

A. Correspondences, emails, and letters (emails from Borough of Paramus email address and personal email address of the following):

1. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. August Greiner's email address "Agreiner@merail.com" for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

2. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. August Greiner's for the year 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

3. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. A. Tito Jackson for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage,*

council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.

4. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. Harry Tuvell for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdlez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

5. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. Richard LaBarbiera for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdlez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

6. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. Joseph Monaghan for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdlez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

7. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. Kevin Kelly for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Milke Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

8. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Mr. Patrick McHale for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Milke Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

9. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Paul Kaufman and Ms. C. Carpenter for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Milke Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

10. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Mr. Paul Kaufman for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarbiera, Jorge, Nunez, Jorge Nunez, Evaristo Burdiez Junior, RVN, PILOT, tax abatement, council*

meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.

11. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Mr. Harry Tuvell for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarberia, Jorge, Nunez, Jorge Nunez, Evaristo Burdiaz Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

12. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Mr. A. Tito Jackson for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarberia, Jorge, Nunez, Jorge Nunez, Evaristo Burdiaz Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

13. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Mr. Joseph Monaghan for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarberia, Jorge, Nunez, Jorge Nunez, Evaristo Burdiaz Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking,*

visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.

14. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Mr. Kevin Kelly for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarberia, Jorge, Nunez, Jorge Nunez, Evaristo Burdiaz Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

15. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Mr. Patrick McHale for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarberia, Jorge, Nunez, Jorge Nunez, Evaristo Burdiaz Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*

16. Provide ALL correspondences (emails and letters) that are "to," "from," "cc," and "bc" between Mr. Rich LaBarberia and Ms. C. Carpenter for the years 2013 and 2014 that contain any of the following words: *Paul, Kaufman, Paul Kaufman 297, Palisade Avenue, 297 Palisade Avenue, Chip, Greiner, August, August Greiner, Chip Greiner, Harry Tuvell, Urban Renewal, partnership, partners, Rich LaBarberia, Jorge, Nunez, Jorge Nunez, Evaristo Burdiaz Junior, RVN, PILOT, tax abatement, council meeting, mayor, Pat, Patrick, Pat McHale, Patrick McHale, Tito, Tito Jackson, construction, development, long term tax exemption, LTTE, tax, Redevelopment Agreement, Redeveloper, Pro Forma, Joseph Monaghan, Joe Monaghan, Joe, Monaghan, M. Doss, Michael Doss, Mike Doss, borough resolution, draft resolution, draft ordinance, ordinance, borough engineer, engineer, borough attorney, Kevin Kelly, abatements, 44 units, parking, visitor parking, resident parking, visitors, residents, temporary signage, signage, garage, grading, pollution, environmental issues, environmental, land contamination, contamination, septic system, septic, sewage, drainage, council, councilman, council board, Board of Education, BoE, accounting, permits, approvals, contracts, construction drawings, construction loan, loans, bank and RSIS waiver.*