



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

April 26, 2016 Government Records Council Meeting

Dudley Burdge
Complainant

v.

NJ Civil Service Commission
Custodian of Record

Complaint No. 2014-168

At the April 26, 2016 public meeting, the Government Records Council (“Council”) considered the March 22, 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:

1. The Custodian complied with the Council’s February 23, 2016 Interim Order because he responded in the extended time frame, providing the previously produced redacted records with certain portions unredacted according to the Order, and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the original Custodian unlawfully denied access to the requested e-mail minutes by providing them to the Complainant in completely redacted form, he did so under the belief that the minutes contained inter-agency or intra-agency advisory, consultative, or deliberative material and was therefore not subject to production under OPRA. Furthermore, as requested by the Council’s February 24, 2015 Interim Order, the current Custodian delivered to the Complainant a revised copy of the previously produced redacted e-mail minutes with some portions unredacted according to the Order on March 9, 2016. Additionally, the evidence of record does not indicate that the original Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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



Final Decision Rendered by the
Government Records Council
On The 26th Day of April, 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: May 2, 2016

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
April 26, 2016 Council Meeting**

**Dudley Burdge¹
Complainant**

GRC Complaint No. 2014-168

v.

**NJ Civil Service Commission²
Custodial Agency**

Records Relevant to Complaint: Electronic copies (preferred) of:

“All agendas, minutes, notes, reports, proposals, discussion papers, job specifications, and any other documents produced for the Information Technology Title Consolidation Committee [“ITTCC”] from its inception to the present day[.]”

Custodian of Record: Peter J. Lyden³

Request Received by Custodian: March 13, 2014

Response Made by Custodian: March 24, 2014

GRC Complaint Received: April 11, 2014

Records Submitted for *In Camera* Examination: Unredacted copies of the previously produced redacted e-mail minutes.

Background

February 23, 2016 Council Meeting:

At its February 23, 2016 public meeting, the Council considered the February 16, 2015 *In Camera* Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said *In Camera* findings and recommendations. The Council, therefore, found that:

1. The Custodian complied with the Council’s May 26, 2015 Interim Order because he responded in the prescribed extended time frame providing the requested records and supporting material for the Council to conduct an *in camera* inspection, as well as certified confirmation of compliance with respect to paragraph 3 of the Interim Order.

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Pamela N. Ullman.

³ The original Custodian in this matter was Christopher Randazzo.

2. The Custodian unlawfully denied access to the requested records of the IT Title Consolidation Committee as it possesses sufficient characteristics to be considered an instrumentality of the state, and thus a “public agency” subject to OPRA. N.J.S.A. 47:1A-1.1.
3. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**⁴
4. 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 24, 2016, the Council distributed its Interim Order to all parties. On February 25, 2016, the Custodian requested an extension of five (5) business days, or until March 9, 2016, to respond to the Council’s Order.

On March 9, 2016, the Custodian responded to the Council’s Interim Order. The Custodian certified that, per the instructions in the February 23, 2016 Interim Order, he provided the Complainant a copy of the responsive e-mails redacted in accordance with the Council’s Order, via e-mail.

Analysis

Compliance

At its February 23, 2016 meeting, the Council ordered the Custodian to comply with the Council’s Finding of the *In Camera* Examination and to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On February 24, 2016, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian’s response was due by close of business on March 2, 2016.

On February 25, 2016, the Custodian wrote to the GRC seeking an extension of time to five (5) business days to respond to the Council’s Interim Order, to March 9, 2016. On March 9, 2016, the Custodian responded to the Council’s Interim Order, certifying that he produced to the Complainant, via e-mail, a copy of the previously produced redacted e-mail “minutes” with certain designated portions unredacted.

⁴ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Therefore, the Custodian complied with the Council's February 23, 2016 Interim Order because he responded in the extended time frame, providing the previously produced redacted records with certain portions unredacted according to the Order, and simultaneously provided certified confirmation of compliance to the Executive Director.

Knowing & Willful

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

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

Although the original Custodian unlawfully denied access to the requested e-mail minutes by providing them to the Complainant in completely redacted form, he did so under the belief that the minutes contained inter-agency or intra-agency advisory, consultative, or deliberative material and was therefore not subject to production under OPRA. Furthermore, as requested by the Council's February 24, 2015 Interim Order, the current Custodian delivered to the Complainant a revised copy of the previously produced redacted e-mail minutes with some portions unredacted according to the Order on March 9, 2016. Additionally, the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's February 23, 2016 Interim Order because he responded in the extended time frame, providing the previously produced redacted records with certain portions unredacted according to the Order, and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the original Custodian unlawfully denied access to the requested e-mail minutes by providing them to the Complainant in completely redacted form, he did so under the belief that the minutes contained inter-agency or intra-agency advisory, consultative, or deliberative material and was therefore not subject to production under OPRA. Furthermore, as requested by the Council's February 24, 2015 Interim Order, the current Custodian delivered to the Complainant a revised copy of the previously produced redacted e-mail minutes with some portions unredacted according to the Order on March 9, 2016. Additionally, the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Husna Kazmir
Staff Attorney

March 22, 2016⁵

⁵ This complaint could not be adjudicated at the Council's March 29, 2016 meeting due to lack of a quorum.



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

INTERIM ORDER

February 23, 2016 Government Records Council Meeting

Dudley Burdge
Complainant

Complaint No. 2014-168

v.

NJ Civil Service Commission
Custodian of Record

At the February 23, 2016 public meeting, the Government Records Council (“Council”) considered the February 16, 2016 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s May 26, 2015 Interim Order because he responded in the prescribed extended time frame providing the requested records and supporting material for the Council to conduct an *in camera* inspection, as well as certified confirmation of compliance with respect to paragraph 3 of the Interim Order.
2. The Custodian unlawfully denied access to the requested records of the IT Title Consolidation Committee as it possesses sufficient characteristics to be considered an instrumentality of the state, and thus a “public agency” subject to OPRA. N.J.S.A. 47:1A-1.1.
3. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.**^[1]
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

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



Interim Order Rendered by the
Government Records Council
On The 23rd Day of February, 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: February 24, 2016

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director
February 23, 2016 Council Meeting**

**Dudley Burdge¹
Complainant**

GRC Complaint No. 2014-168

v.

**NJ Civil Service Commission²
Custodial Agency**

Records Relevant to Complaint: Electronic copies (preferred) of:

“All agendas, minutes, notes, reports, proposals, discussion papers, job specifications, and any other documents produced for the Information Technology Title Consolidation Committee [“ITTCC”] from its inception to the present day[.]”

Custodian of Record: Christopher Randazzo
Request Received by Custodian: March 13, 2014
Response Made by Custodian: March 24, 2014
GRC Complaint Received: April 11, 2014

Records Submitted for *In Camera* Examination: Unredacted copies of the previously produced redacted e-mail minutes.

Background

May 26, 2015 Council Meeting:

At its May 26, 2015 public meeting, the Council considered the May 19, 2015 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian complied with the Council’s March 31, 2015 Interim Order because he responded in the extended time frame providing records to the Complainant and simultaneously provided certified confirmation of compliance to the Deputy Executive Director.
2. The GRC must conduct an *in camera* review of the responsive e-mail minutes to determine the validity of the Custodian’s assertion that the records contain advisory,

¹ No legal representation listed on record.

² Represented by Deputy Attorney General Pamela N. Ullman.

consultative, or deliberative material and are exempt from disclosure under OPRA. See Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005); N.J.S.A. 47:1A-1.1.

3. **The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see #2 above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. 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 May 28, 2015, the Council distributed its Interim Order to all parties. On June 2, 2015, the Custodian's Counsel requested and was granted an extension of time until June 11, 2015 to comply with the Council's Interim Order. On June 11, 2014, the Custodian responded to the Interim Order by delivering to the GRC in a sealed envelope nine (9) copies of the requested unredacted e-mails responsive to the request for an *in camera* inspection. The legal certification also addressed the Custodian's compliance with paragraph 3 of the Interim Order.

Analysis

Compliance

At its May 26, 2015 meeting, the Council ordered the Custodian to deliver to the GRC nine (9) copies of the requested unredacted email minutes responsive to the request for an *in camera* inspection. The Council also ordered the Custodian to deliver to the GRC a legal certification that the records provided are the records requested by the Council for the *in camera* inspection, a redaction index, and a certification of compliance with respect to paragraph 3 of the Interim Order. On May 28, 2015, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on June 4, 2015.

On June 2, 2015, the Custodian's Counsel requested and was granted a five (5) business day extension of time to comply with the Council's Order; therefore, as extended the Custodian's response was due by close of business on June 11, 2015. On June 11, 2015, the Custodian delivered to the GRC nine (9) copies of the requested unredacted e-mails, a legal certification that the records provided are the records requested by the Council for the *in camera* inspection, a redaction index, and a certification of compliance with respect to paragraph 3 of the Interim Order.

Accordingly, the Custodian complied with the Council's May 26, 2015 Interim Order because he responded in the extended time frame providing the requested records and supporting material for the Council to conduct an *in camera* inspection, as well as certified confirmation of compliance with respect to paragraph 3 of the Interim Order.

Unlawful Denial of Access

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

The Custodian contends that the records submitted for *in camera* examination are exempt from disclosure because (1) they came from the IT Title Consolidation Committee, which the Custodian argued was not a "public body with any voting members" and therefore not required to disclose its records under OPRA³ and (2) constitute advisory, consultative, or deliberative ("ACD") material.

The IT Title Consolidation Committee's Status under OPRA

OPRA defines a "public agency" as:

[A]ny of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

N.J.S.A. 47:1A-1.1.

OPRA does not define an "instrumentality" of the state or a political subdivision, but the New Jersey Supreme Court has assigned it the generally accepted meaning of a "thing used to achieve an end or purpose and, alternatively, as a means or agency through which a function of another entity is accomplish, such as a branch of a governing body." Fair Share Hous. Ctr., Inc. v. New Jersey State League of Municipalities, 207 N.J. 489, 503 (2011).

³ See Page 3 of April 17, 2015 Certification by Custodian.

The Custodian argues that the e-mails responsive to the request, which were ordered by the Council for an *in camera* examination, were not initially disclosed because they were records created by the IT Title Consolidation Committee. The Custodian further asserted that the IT Title Consolidation Committee had no legal requirements to produce minutes, pursuant to the Open Public Meetings Act, N.J.S.A. 10:4-7, 10:4-8, as it is not a “public body” under that law, because it is not “organized by law and it is not collectively empowered as a multi-member voting body to spend public funds or affect persons’ rights.”⁴ However, the GRC has no authority over OPMA, and the denial of access at issue here concerns whether the requested documents can be classified as “government records” for purposes of OPRA, and therefore subject to disclosure.

The question of whether an entity is a “public agency” subject to OPRA has been examined by both the New Jersey Supreme Court and by the Appellate Division. In The Times of Trenton Publishing Corporation v. Lafayette Yard Community Development Corporation, 368 N.J. Super. 425 (App. Div. 2004), the Appellate Division found that Lafayette Yard, a private, non-profit corporation created for the express purpose of redeveloping property donated to it by the City of Trenton, was in fact a “public agency” as defined by OPRA, as well as a “public body” under OPMA, and ordered disclosure of records. In that instance, the court held that the corporation was an “instrumentality” created and ultimately controlled by the city, and thus a “public agency” under OPRA for essentially the same reasons that it was a “public body” under the OPMA. The New Jersey Supreme Court ultimately affirmed this decision in The Times of Trenton Publishing Corporation v. Lafayette Yard Community Development Corporation, 183 N.J. 519 (2005).

In League of Municipalities, the Supreme Court reviewed the Appellate Division’s decision that the New Jersey State League of Municipalities (“League”) was not a public agency under OPRA. League of Municipalities, 207 N.J. at 489. The Court acknowledged that although the Appellate Division relied on the holding in Lafayette Yard, it “went astray by importing into OPRA’s definition of ‘public agency’ the definition of a ‘public body’ found in [OPMA]...[t]he language defining a ‘public body’...under OPRA are distinctly different.” Id. at 504-05. The Court thus held that a creation test, as opposed to a governmental function test, controlled in determining whether an entity was a public agency for purposes of OPRA. Id. Specifically, the Court held that:

In Lafayette Yard, we remained faithful to the text of [OPRA] and determined that, in essence, the nonprofit corporation (an ‘instrumentality’) was *created* by a public subdivision therefore making it a ‘public agency’...The creation test, not the governmental-function test, controlled. Our decision in this case, finding that the [League] is a ‘public agency,’ is wholly consistent with...Lafayette Yard.

Id. at 507 (emphasis in original).

Here, the IT Title Consolidation Committee was, like the entities at issue in Lafayette Yard and League of Municipalities, created by the state or a political subdivision thereof, as the record reflects that the IT Title Consolidation Committee was created pursuant to the Civil

⁴ Certification by Custodian, April 17, 2015.

Service Commission's ("CSC") statutory charge in N.J.S.A. 11A:3-1 to continuously review the State classification plan and establish, consolidate, and abolish job titles. The Custodian certified that the Commission's then Division of Classification and Personnel Management, now known as the Division of Agency Services, instituted a review of Information Technology titles used throughout the State for potential consolidation. This process entailed the Division inviting the participation of Human Resources and IT representatives from various State departments to review their internal IT functions and titles for the Division's consideration, and the IT Title Consolidation Committee consisted of this inter-agency group.

The Custodian argued that the Committee was not required to disclose the requested minutes for a variety of reasons: the group met periodically beginning in 2011, it did not have defined or appointed members but rather attendance was open, and the CSC, not the Committee, made the ultimate decisions as to which IT titles would be established, consolidated, and abolished. The Custodian certified that the CSC considered the various opinions, suggestions and concerns of the Committee before reaching its decision. The Custodian additionally argued that the Committee is neither required by law to exist, nor does it have any decision-making, voting, or spending power but rather functions as an informal and purely advisory committee, with no effective authority. The Custodian finally argued that the fact that such e-mails contained information labeled "minutes" by the Committee staff who distributed the e-mails, does not make that information "minutes" for the purpose of a public meeting, as "[t]he Committee is not a public body under the law that is required to produce either agendas or minutes."

This argument hinges on a reading of the Open Public Meetings Act; however, the GRC has no authority over OPMA and the fact that the committee is not subject to OPMA does not automatically make the committee not subject to OPRA. The Supreme Court has held that a creation test, and not a governmental function test, controls in determining whether an entity is a public agency for purposes of OPRA. Here, the IT Title Consolidation Committee was created as a result of the Civil Service Commission, in order to assist in reviewing IT titles used throughout the State for potential consolidation. As the Custodian certified, the group was an inter-agency group, consisting of State employees from various departments. It is readily apparent that the functions of the group qualify it as an instrumentality of the state and that its records are subject to OPRA because they were made, maintained, and kept on file in the official course of business.

Therefore, the Custodian unlawfully denied access to the requested records of the IT Title Consolidation Committee as it possesses sufficient characteristics to be considered an instrumentality of the state, and thus a "public agency" subject to OPRA. N.J.S.A. 47:1A-1.1. The question of whether the content and subject of the meetings of the Committee was completely deliberative and conducted for the purpose of advising, consulting and deliberating with regard to the proposed IT title consolidation and therefore exempt from disclosure as ACD material will be examined below.⁵

⁵ This decision is restricted to the facts under these circumstances.

ACD Material

The Custodian certified that the e-mail minutes responsive to the request, which were ordered by the Council for an *in camera* examination, required redactions because they contained advisory, consultative, or deliberative (“ACD”) material exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. OPRA excludes from the definition of a government record “inter-agency or intra-agency advisory, consultative or deliberative material.” N.J.S.A. 47:1A-1.1. It is evident that this phrase is intended to exclude from the definition of a government record the types of documents that are the subject of the “deliberative process privilege.”

The deliberative process privilege is a doctrine that permits government agencies to withhold documents that reflect advisory opinions, recommendations and deliberations submitted as part of a process by which governmental decisions and policies are formulated. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150, 95, S. Ct. 1504, 1516, 44 L. Ed. 2d 29, 47 (1975). This long-recognized privilege is rooted in the concept that the sovereign has an interest in protecting the integrity of its deliberations. The earliest federal case adopting the privilege is Kaiser Alum. & Chem. Corp. v. United States, 157 F. Supp. 939 (1958). Federal district courts and circuit courts of appeal subsequently adopted the privilege and its rationale. United States v. Farley, 11 F.3d 1385, 1389 (7th Cir. 1993). It has also been codified in the federal Freedom of Information Act (“FOIA”) 5 U.S.C. §552(b)(5).

The deliberative process privilege was discussed at length in In Re Liquidation of Integrity Ins. Co., 165 N.J. 75 (2000). There, the court addressed the question of whether the Commissioner of Insurance, acting in the capacity of Liquidator of a regulated entity, could protect certain records from disclosure which she claimed contained opinions, recommendations or advice regarding agency policy. Id. at 81. The court adopted a qualified deliberative process privilege based upon the holding of McClain v. College Hospital, 99 N.J. 346 (1985), In Re: Liquidation of Integrity, *supra*, 165 N.J. at 88. In doing so, the court noted that:

“[a] document must meet two requirements for the deliberative process privilege to apply. First, it must have been generated before the adoption of an agency's policy or decision. In other words, it must be pre-decisional. ... Second, the document must be deliberative in nature, containing opinions, recommendations, or advice about agency policies...Purely factual material that does not reflect deliberative processes is not protected...Once the government demonstrates that the subject materials meet those threshold requirements, the privilege comes into play. In such circumstances, the government's interest in candor is the "preponderating policy" and, prior to considering specific questions of application, the balance is said to have been struck in favor of non-disclosure.” (Citations omitted.) *Id.* at 84-85.

The court further set out procedural guidelines based upon those discussed in McClain:

“[t]he initial burden falls on the state agency to show that the documents it seeks to shield are pre-decisional and deliberative in nature (containing opinions, recommendations, or advice about agency policies). Once the deliberative nature

of the documents is established, there is a presumption against disclosure. The burden then falls on the party seeking discovery to show that his or her compelling or substantial need for the materials overrides the government's interest in non-disclosure. Among the considerations are the importance of the evidence to the movant, its availability from other sources, and the effect of disclosure on frank and independent discussion of contemplated government policies.” In Re Liquidation of Integrity, *supra*, 165 N.J. at 88, citing McClain, *supra*, 99 N.J. at 361-62, 492 A.2d 991.

In O’Shea v. West Milford Bd. of Educ., GRC Complaint No. 2004-93 (April 2006), the Council stated that “neither the statute nor the courts have defined the terms ‘intra-agency’ or ‘advisory, consultative, or deliberative’ in the context of the public records law. The Council looks to an analogous concept, the deliberative process privilege, for guidance in the implementation of OPRA’s ACD exemption. Both the ACD exemption and the deliberative process privilege enable a governmental entity to shield from disclosure material that is pre-decisional and deliberative in nature. Deliberative material contains opinions, recommendations, or advice about agency policies. Strictly factual segments of an otherwise deliberative document are not exempted from disclosure. In re the Liquidation of Integrity, 165 N.J. 75, 88 (2000); In re Readoption With Amendments of Death Penalty Regulations, *supra* at 73 (App. Div. 2004).”

The GRC conducted an *in camera* examination on the submitted records, numbered one (1) through thirty-one (31). The results of this examination are set forth in the following table:

Record or Redaction Number	Record Name/Date	Description of Record or Redaction	Custodian’s Explanation/ Citation for Non-disclosure or Redactions	Findings of the <i>In Camera</i> Examination⁶
1.	E-mail from Christopher Cemele, dated November 7,	Entire e-mail content from Christopher Cemele’s e-	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a	Disclose bullet points 1, 4, and 8. These items do not contain

⁶ **Unless expressly identified for redaction, everything in the record shall be disclosed.** For purposes of identifying redactions, unless otherwise noted a paragraph/new paragraph begins whenever there is an indentation and/or a skipped space(s). The paragraphs are to be counted starting with the first whole paragraph in each record and continuing sequentially through the end of the record. If a record is subdivided with topic headings, renumbering of paragraphs will commence under each new topic heading. Sentences are to be counted in sequential order throughout each paragraph in each record. Each new paragraph will begin with a new sentence number. If only a portion of a sentence is to be redacted, the word in the sentence which the redaction follows or precedes, as the case may be, will be identified and set off in quotation marks. If there is any question as to the location and/or extent of the redaction, the GRC should be contacted for clarification before the record is redacted. The GRC recommends the redactor make a paper copy of the original record and manually "black out" the information on the copy with a dark colored marker, then provide a copy of the blacked-out record to the requester.

	2011 at 11:29 AM, Subject: Minutes of 11/4 Meeting	mail except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 11-4-11," date of next committee meeting, and Christopher Cemele's e-mail signature.	public body	opinions, recommendations, or advice about agency policies; nor do they contain deliberative language; therefore, they are not ACD. The balance of the record is exempt as ACD material.
2.	E-mail from Christopher Cemele, dated November 22, 2011 at 11:39 AM, Subject: Minutes from the November 18th Meeting	Entire e-mail content from Christopher Cemele's e-mail except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 11-18-11," date of next committee meeting, and Christopher Cemele's e-mail signature.	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	Disclose bullet points 1, 2, 5, 6. These items do not contain opinions, recommendations, or advice about agency policies; nor do they contain deliberative language; therefore, they are not ACD. The balance of the record is exempt as ACD material.
3.	E-mail from Christopher Cemele, dated December 19, 2011 at 12:23 PM, Subject: Minutes from the 12-16-11 Meeting"	Entire e-mail content from Christopher Cemele's e-mail except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 12-16-11," date of next committee meeting, and	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	Disclose bullet points 2, 6, 7, 8, and 9. These items do not contain opinions, recommendations, or advice about agency policies; nor do they contain deliberative language; therefore, they are not ACD. The

		Christopher Cemele's e-mail signature.		balance of the record is exempt as ACD material.
4.	E-mail from Danielle Chisholm dated January 10, 2012 at 11:20 AM, Subject: Minutes from the 1-6-2012 Meeting	Entire e-mail content except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 1-6-2012," date, location, and time of next scheduled meeting and Danielle Chisholm/Nobilucci's e-mail signature.	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a public body	Disclose bullet points 12 and 13. These items do not contain opinions, recommendations, or advice about agency policies; nor do they contain deliberative language; therefore, they are not ACD. The balance of the record is exempt as ACD material.
5.	E-mail from Danielle Chisholm dated January 26, 2012 at 11:33 AM, Subject: Minutes from the 1-20-2012 Meeting	Entire e-mail content except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 1-20-2012," date, location, and time of next scheduled meeting and Danielle Chisholm/Nobilucci's e-mail signature.	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a public body	The balance of this record is exempt as ACD material.
6.	E-mail from Danielle Chisholm dated February 22, 2012 at 2:40 PM, Subject: Minutes from the 2-17-2012	Entire e-mail content except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 2-	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a public body	Disclose points 3.iv and B.3. These items do not contain opinions, recommendations, or advice about agency policies;

	Meeting	17-2012,” date, location, and time of next scheduled meeting and Danielle Chisholm/Nobilucci’s e-mail signature.		nor do they contain deliberative language; therefore, they are not ACD. The balance of the record is exempt as ACD material.
7.	E-mail from Danielle Chisholm dated March 21, 2012 at 2:02 PM, Subject: Minutes from the 3-16-2012 IT Title Consolidation Meeting	Entire e-mail content except for subject line, e-mail heading “Results of the IT Title Consolidation Meeting of 3-16-2012,” date, location, and time of next scheduled meeting and Danielle Chisholm/Nobilucci’s e-mail signature.	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	The balance of this record is exempt as ACD material.
8.	E-mail from Adeseye Sotimehin dated April 9, 2012 at 3:25 PM, Subject: Minutes from the 3-30-2012 IT Title Consolidation Meeting	Entire e-mail content except for subject line, e-mail heading “Results of the IT Title Consolidation Meeting of 3-30-2012,” date, location, and time of next scheduled meeting.	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	The balance of this record is exempt as ACD material.
9.	E-mail from Danielle Chisholm dated May 4, 2012 at 11:15 AM, Subject: Minutes from	Entire e-mail content except for subject line, e-mail heading “Results of the IT Title Consolidation	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	The balance of this record is exempt as ACD material.

	the 4-27-2012 IT Title Consolidation Meeting	Meeting of 4-27-2012,” date, location, and time of next scheduled meeting and Danielle Chisholm/Nobilucci’s e-mail signature.		
10.	E-mail from Danielle Chisholm dated June 22, 2012 at 9:46 AM, Subject: Minutes from the 6-7-2012 IT Title Consolidation Meeting	Entire e-mail content except for subject line, e-mail heading “Results of the IT Title Consolidation Meeting of 6-7-2012,” a note that the June 7 th meeting was the last at which Chris Cemele would be in attendance as a contributing member; the date, location, and time of next scheduled meeting; and Danielle Chisholm/Nobilucci’s e-mail signature.	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	The balance of this record is exempt as ACD material.
11.	E-mail from Danielle Chisholm dated July 17, 2012 at 9:32 AM, Subject: Minutes from the 7-11-2012 IT Title Consolidation	Entire e-mail content except for subject line, e-mail heading “Results of the IT Title Consolidation Meeting of 7-11-2012,” date, location, and	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	Disclose point 6. This item does not contain opinions, recommendations, or advice about agency policies; nor does it contain deliberative language; therefore, it is not

	Meeting	time of next scheduled meeting and Danielle Chisholm/Nobilucci's e-mail signature.		ACD. The balance of the record is exempt as ACD material.
12.	E-mail from Danielle Chisholm dated September 19, 2012 at 2:30 PM, Subject: Minutes from the 9-14-2012 IT Title Consolidation Meeting	Entire e-mail content except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 9-14-2012," date, location, and time of next scheduled meeting and Danielle Chisholm/Nobilucci's e-mail signature.	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	The balance of the record is exempt as ACD material.
13.	E-mail from Danielle Chisholm dated October 22, 2012 at 9:34 AM, Subject: Minutes from the 10-12-2012 IT Title Consolidation Meeting	Entire e-mail content except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 10-12-2012," a notice that "All agencies/stakeholders are encouraged to attend future meetings, to ensure that all viewpoints are being considered on all matters," the date, location, and time of	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	Disclose point 1. This item does not contain opinions, recommendations, or advice about agency policies; nor does it contain deliberative language; therefore, it is not ACD. The balance of the record is exempt as ACD material.

		next scheduled meeting; and Danielle Chisholm/Nobilucci's e-mail signature.		
14.	E-mail from Danielle Chisholm dated November 27, 2012 at 3:07 PM, Subject: Minutes from the 11-16-2012 IT Title Consolidation Meeting	Entire e-mail content except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 11-16-2012," date, location, and time of next scheduled meeting and Danielle Chisholm/Nobilucci's e-mail signature.	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a public body	Disclose point 1. This item does not contain opinions, recommendations, or advice about agency policies; nor does it contain deliberative language; therefore, it is not ACD. The balance of the record is exempt as ACD material.
15.	E-mail from Danielle Chisholm dated December 5, 2012 at 3:13 PM, Subject: Administrative Analyst Data Processing Series	Entire e-mail content except for subject line, e-mail heading and Danielle Chisholm's e-mail signature.	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a public body	The balance of this record is exempt as ACD material.
16.	E-mail from Danielle Chisholm dated December 17, 2012 at 8:51 AM, Subject: Minutes from the 12-6-2012 Meeting	Entire e-mail content except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 12-6-2012," date, location, and time of next scheduled meeting and	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a public body	Disclose point 1 and bullet point 6 of point 2. This item does not contain opinions, recommendations, or advice about agency policies; nor does it contain deliberative language; therefore, it is not ACD. The balance

		Danielle Chisholm's e-mail signature.		of the record is exempt as ACD material.
17.	E-mail from Danielle Chisholm dated February 6, 2013 at 10:00 AM, Subject: Minutes from the 1-25-2013 Meeting	Entire e-mail content except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 1-25-2013," date, location, and time of next scheduled meeting and Danielle Chisholm's e-mail signature.	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	Disclose point 1. This item does not contain opinions, recommendations, or advice about agency policies; nor does it contain deliberative language; therefore, it is not ACD. The balance of the record is exempt as ACD material.
18.	E-mail from Danielle Chisholm dated March 1, 2013 at 11:09 AM, Subject: Minutes from the 2-22-2013 Meeting	Entire e-mail content except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 2-22-2013," date, location, and time of next scheduled meeting and Danielle Chisholm's e-mail signature.	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	The balance of this record is exempt as ACD material.
19.	E-mail from Danielle Chisholm dated March 28, 2013 at 9:10 AM, Subject: Minutes from the 3-22-2013 Meeting	Entire e-mail content except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 3-22-2013," date, location, and	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	The balance of this record is exempt as ACD material.

		time of next scheduled meeting and Danielle Chisholm's e-mail signature.		
20.	E-mail from Danielle Chisholm dated April 29, 2013 at 9:29 AM, Subject: Minutes from the 4-19-2013 IT Title Consolidation Meeting	Entire e-mail content except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 4-19-2013," the date, location, and time of next scheduled meeting, and Danielle's Chisholm's e-mail signature.	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a public body	The balance of this record is exempt as ACD material.
21.	E-mail from Danielle Chisholm dated May 15, 2013 at 10:04 AM, Subject: Cancellation of May 17 th IT Title Consolidation Meeting	Entire e-mail content except for subject line, and body of e-mail except for notice that May 17 th meeting is cancelled and Danielle Chisholm's e-mail signature.	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a public body	Disclose Paragraph 1 and Paragraph 3. These items do not contain opinions, recommendations, or advice about agency policies; nor do they contain deliberative language; therefore, they are not ACD. The balance of the record is exempt as ACD material.
22.	E-mail from Danielle Chisholm dated June 14, 2013 at 11:07 AM,	Entire e-mail content except for subject line, and first paragraph of e-	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a public body	Disclose sentence 1 reading "Good morning," and Paragraph 1. These item do not

	Subject: Rescheduling of the June 21st IT Title Consolidation Meeting	mail stating the rescheduled meeting date, and Danielle Chisholm's e- mail signature.		contain opinions, recommendations, or advice about agency policies; nor do they contain deliberative language; therefore, they are not ACD. The balance of the record is exempt as ACD material.
23.	E-mail from Danielle Chisholm dated July 3, 2013 at 2:02 PM, Subject: Minutes from the 6-27-2013 IT Title Consolidation Meeting	Entire e-mail content except for subject line; the date, location, and time of next scheduled meeting, and Danielle Chisholm's e- mail signature.	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a public body	Disclose opening sentence reading "Good afternoon," and the following portion of paragraph 1 reading "Attached you will find the 6/27/13 Meeting Minutes," and Point 5. These items do not contain opinions, recommendations, or advice about agency policies; nor do they contain deliberative language; therefore, they are not ACD. The balance of the record is exempt as ACD material.
24.	E-mail from Danielle Chisholm dated August 21,	Entire e-mail content except for subject line, e-mail heading	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a	Disclose points 5 and 6. These items do not contain opinions,

	2013 at 9:36 AM, Subject: Minutes from the 8-9-2013 Meeting	stating “Results of the IT Title Consolidation Meeting of 8-9-2013,” the date, location, and time of the next scheduled meeting, and Danielle Chisholm’s e-mail signature.	public body	recommendations, or advice about agency policies; nor do they contain deliberative language; therefore, they are not ACD. The balance of the record is exempt as ACD material.
25.	E-mail from Danielle Chisholm dated September 19, 2013 at 12:02 PM, Subject: IT Title Consolidation Meeting	Entire e-mail content except for subject line and first paragraph stating reminder that meeting is today at 2:00 PM, and Danielle Chisholm’s e-mail signature.	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	The balance of this record is exempt as ACD material.
26.	E-mail from Danielle Chisholm dated September 27, 2013 at 9:30 AM, Subject: Minutes from the 9-19-2013 IT Title Consolidation Meeting	Entire e-mail content except for subject line, e-mail heading “Results of the IT Title Consolidation Meeting of 9-19-2013,” the date, location, and time of the next scheduled meeting, and Danielle Chisholm’s e-mail signature.	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	The balance of this record is exempt as ACD material.
27.	E-mail from Danielle Chisholm dated October 17,	Entire e-mail content except for subject line, first sentence	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a	The balance of this record is exempt as ACD material.

	2013 at 2:50 PM, Subject: IT Title Consolidation Meeting, 10/18/13	introducing a “friendly reminder about tomorrow’s meeting,” and a two (2) page document titled “Distinguishing Between IT Workers and IT Users.”	public body	
28.	E-mail from Danielle Chisholm dated November 8, 2013 at 2:14 PM, Subject: Minutes from the 10-18-2013 IT Title Consolidation Meeting	Entire e-mail content except for subject line, first sentence of e-mail apologizing for delay in distribution of the minutes, the e-mail heading “Results of the IT Title Consolidation Meeting of 10-18-2013,” the date, location, and time of the next scheduled meeting, and Danielle Chisholm’s e-mail signature, and the two page document distinguishing between IT Workers and IT Users.	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a public body	The balance of this record is exempt as ACD material.
29.	E-mail from Danielle Chisholm dated November 8, 2013 at 2:38 PM, Subject: Potential	Entire e-mail content except for subject line, and last sentence asking for review of attached	ACD pursuant to <u>N.J.S.A.</u> 47:1A-1.1; ITTCC is not a public body	The balance of this record is exempt as ACD material.

	Career Paths for Tech MIS Series	documents and submission of questions or comments to Danielle Chisholm or Adeseye Sotimehin prior to the next meeting, and Danielle Chisholm's e-mail signature.		
30.	E-mail from Danielle Chisholm dated December 5, 2013 at 12:09 PM, Subject: Minutes from the 11-15-2013 IT Title Consolidation Meeting	Entire e-mail content except for subject line, e-mail heading "Results of the IT Title Consolidation Meeting of 11-15-2013," a sentence noting that the next scheduled meeting has been cancelled and members will be notified when a new date is decided upon, and Danielle Chisholm's e-mail signature.	ACD pursuant to <u>N.J.S.A. 47:1A-1.1</u> ; ITTCC is not a public body	Disclose the portion of point 4 up to "changes" and keep the remainder of that sentence redacted. Disclose the last two sentences of point 4. Disclose point 9. These items do not contain opinions, recommendations, or advice about agency policies; nor do they contain deliberative language; therefore, they are not ACD. The balance of the record is exempt as ACD material.

Knowing & Willful

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's May 26, 2015 Interim Order because he responded in the prescribed extended time frame providing the requested records and supporting material for the Council to conduct an *in camera* inspection, as well as certified confirmation of compliance with respect to paragraph 3 of the Interim Order.
2. The Custodian unlawfully denied access to the requested records of the IT Title Consolidation Committee as it possesses sufficient characteristics to be considered an instrumentality of the state, and thus a "public agency" subject to OPRA. N.J.S.A. 47:1A-1.1.
3. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.^[1]**
4. 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: Husna Kazmir
Staff Attorney

February 16, 2016

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



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Acting Commissioner

INTERIM ORDER

May 26, 2015 Government Records Council Meeting

Dudley Burdge
Complainant

Complaint No. 2014-168

v.

NJ Civil Service Commission
Custodian of Record

At the May 26, 2015 public meeting, the Government Records Council ("Council") considered the May 19, 2015 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds:

1. The Custodian complied with the Council's March 31, 2015, Interim Order because he responded in the extended time frame providing records to the Complainant and simultaneously provided certified confirmation of compliance to the Deputy Executive Director.
2. The GRC must conduct an *in camera* review of the responsive e-mail minutes to determine the validity of the Custodian's assertion that the records contain advisory, consultative, or deliberative material and are exempt from disclosure under OPRA. *See Paff v. NJ Dep't of Labor, Bd. of Review*, 379 N.J. Super. 346 (App. Div. 2005); N.J.S.A. 47:1A-1.1.
3. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see #2 above), a document or redaction index,² as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,³ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**

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

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

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

4. 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 26th Day of May, 2015

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: May 28, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Dudley Burdge¹
Complainant**

GRC Complaint No. 2014-168

v.

**NJ Civil Service Commission²
Custodial Agency**

Records Relevant to Complaint: Electronic copies (preferred) of:

“All agendas, minutes, notes, reports, proposals, discussion papers, job specifications, and any other documents produced for the Information Technology Title Consolidation Committee (“ITTCC”) from its inception to the present day[.]”

Custodian of Record: Christopher Randazzo
Request Received by Custodian: March 13, 2014
Response Made by Custodian: March 24, 2014
GRC Complaint Received: April 11, 2014

Background

March 31, 2015 Council Meeting:

At its March 31, 2015, public meeting, the Council considered the March 24, 2015, Findings and Recommendations of the Deputy 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 Complainant’s OPRA request seeking notes, reports, proposals, discussion papers, job descriptions, and documents is overly broad and failed to specifically identify the records sought. OPRA obligates requestors to reasonably identify the documents requested, and identifying only the type of record sought is insufficient pursuant to MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005), Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

¹ No legal representative listed on record.

² Represented by Pamela N. Ullman, DAG.

2. The evidence of record demonstrates that the Custodian unlawfully denied access to the minutes and agendas of the Information Technology Title Consolidation Committee from the date of its inception to the present (March 13, 2014). N.J.S.A. 47:1A-6. A request for a committee's agendas and minutes with date ranges are identifiable records pursuant to Moore v. Twp. of Washington (Bergen), GRC Complaint No. 2002-72 (January 2003), Kumka (Northern Valley Suburbanite) v. City of Englewood (Bergen), GRC Complaint No. 2007-07 (January 2010), and Donato v. Borough of Emerson, GRC Complaint No. 2005-125 (Interim Order dated February 28, 2007). The Custodian shall disclose any responsive records.
3. **The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,³ to the Deputy Executive Director.⁴**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On April 1, 2015, the Council distributed its Interim Order to all parties. On April 1, 2015, the Custodian's Counsel requested an extension for response to the Interim Order through April 17, 2015. On April 6, 2015, the GRC granted the extension through April 17, 2015.

On April 17, 2015, the Custodian responded to the Council's Interim Order. The Custodian certified that he provided the responsive records with redactions to the Complainant in September of 2014, after a subsequent OPRA request made by the Complainant in June 2014. The Custodian resent those same records to the Complainant on April 17, 2015.

Analysis

Compliance

At its March 31, 2015, meeting, the Council ordered the Custodian to disclose any responsive records to the Complainant pursuant to the Order. Further, the Council ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Deputy Executive Director. On April 1, 2015, the Council distributed its Interim

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

⁴ 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.

Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on April 8, 2015.

On April 1, 2015, the Custodian's Counsel requested an extension for response to the Interim Order through April 17, 2015. This request was granted on April 6, 2015, and on April 17, 2015, the Custodian responded to the Council's Order, certifying that he provided the responsive e-mail records, the bodies of which were entirely redacted, to the Complainant and the Council.

Therefore, the Custodian complied fully with the Council's March 31, 2015, Interim Order because he responded in the extended time frame providing records to the Complainant and the Council and simultaneously provided certified confirmation of compliance to the Deputy Executive Director.

Unlawful Denial of Access

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

In Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council⁵ that accepted the custodian's legal conclusion for the denial of access without further review. The Appellate Division noted that "OPRA contemplates the GRC's meaningful review of the basis for an agency's decision to withhold government records When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers." Id. The Court stated that:

[OPRA] also contemplates the GRC's *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the 'Open Public Meetings Act,' N.J.S.A. 10:4-6 to -21, it also provides that the GRC 'may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.' N.J.S.A. 47:1A-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

Id. at 355.

Further, the Court found that:

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal There is no reason

⁵ Paff v. NJ Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC's obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

Id.

Here, the Custodian argued that the ITTCC is "not a public body under the law that is required to produce either agendas or minutes." The Custodian further asserted that the records responsive to the Complainant's request consisted of e-mails, referred to as "minutes," which contained information that was advisory, consultative, and deliberative privileged material, pursuant to N.J.S.A. 47:1A-1.1. Finally, the Custodian argued that the fact that such e-mails contained information labeled "minutes" did "not make that information 'minutes' for the purpose of a public meeting." Based on the foregoing, it is necessary for the GRC to conduct an *in camera* examination of the emails.

Upon receipt, the Complainant called the GRC to question the heavy redactions. The GRC observed that the redactions were contained in the majority of the e-mail bodies, but not the recipients or subject lines. Therefore, the GRC must conduct an *in camera* review of the responsive e-mail minutes to determine the validity of the Custodian's assertion that the same consist of "...inter-agency or intra-agency advisory, consultative or deliberative material and exempt from disclosure under OPRA. See Paff, 379 N.J. Super. at 346; N.J.S.A. 47:1A-1.1.

Knowing & Willful

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

Conclusions and Recommendations

The Deputy Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's March 31, 2015, Interim Order because he responded in the extended time frame providing records to the Complainant and simultaneously provided certified confirmation of compliance to the Deputy Executive Director.
2. The GRC must conduct an *in camera* review of the responsive e-mail minutes to determine the validity of the Custodian's assertion that the records contain advisory, consultative, or deliberative material and are exempt from disclosure under OPRA. See Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005); N.J.S.A. 47:1A-1.1.

3. **The Custodian must deliver⁶ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see #2 above), a document or redaction index,⁷ as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,⁸ that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. 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: Husna Kazmir
Staff Attorney

Approved By: Dawn R. SanFilippo
Deputy Executive Director

May 19, 2015

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

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

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."



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

March 31, 2015 Government Records Council Meeting

Dudley Burdge
Complainant

Complaint No. 2014-168

v.

NJ Civil Service Commission
Custodian of Record

At the March 31, 2015 public meeting, the Government Records Council ("Council") considered the March 24, 2015 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Complainant's OPRA request seeking notes, reports, proposals, discussion papers, job descriptions and documents is overly broad and failed to specifically identify the records sought. OPRA obligates requestors to reasonably identify the documents requested, and identifying only the type of record sought is insufficient pursuant to MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005), Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
2. The evidence of record demonstrates that the Custodian unlawfully denied access to the minutes and agendas of the Information Technology Title Consolidation Committee from the date of its inception to the present (March 13, 2014). N.J.S.A. 47:1A-6. A request for a committee's agendas and minutes with date ranges are identifiable records pursuant to Moore v. Twp. of Washington (Bergen), GRC Complaint No. 2002-72 (January 2003), Kumka (Northern Valley Suburbanite) v. City of Englewood (Bergen), GRC Complaint No. 2007-07 (January 2010), and Donato v. Borough of Emerson, GRC Complaint No. 2005-125 (Interim Order dated February 28, 2007). The Custodian shall disclose any responsive records.
3. **The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**

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."



4. 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 31st Day of March, 2015

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: April 1, 2015

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.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 31, 2015 Council Meeting**

**Dudley Burdge¹
Complainant**

GRC Complaint No. 2014-168

v.

**NJ Civil Service Commission²
Custodial Agency**

Records Relevant to Complaint: Electronic copies (preferred) of:

“All agendas, minutes, notes, reports, proposals, discussion papers, job specifications, and any other documents produced for the Information Technology Title Consolidation Committee [“ITTCC”] from its inception to the present day[.]”

Custodian of Record: Christopher Randazzo
Request Received by Custodian: March 13, 2014
Response Made by Custodian: March 24, 2014
GRC Complaint Received: April 11, 2014

Background³

Request and Response:

On March 13, 2014 the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 24, 2014, seven (7) business days later, the Custodian responded in writing to deny the request as overbroad and unclear because it failed to specifically identify records and required research beyond the scope of the Custodian’s responsibilities.

Denial of Access Complaint:

On April 11, 2014, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant made no additional arguments beyond his April 2, 2014 reply to the Custodian’s response. There, the Complainant was critical of the Custodian’s claim that a request for the minutes of the ITTCC would be considered overbroad and unclear.

¹ No legal representative listed on record.

² Pamela N. Ullman, DAG.

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.

Statement of Information:

On May 22, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the Complainant’s OPRA request violated the spirit of the law requiring requestors to be specific and not requiring custodians to conduct wholesale research in identifying records. The Custodian argued that the lack of identifying authors, titles, and dates of records such as “notes” and “proposals” rendered the Complainant’s request invalid.

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.

The New Jersey Appellate Division has 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.” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005) (emphasis added). See also Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005).⁴

The Court further held 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.

MAG, 375 N.J. Super. at 549 (emphasis added).

Moreover, the GRC has repeatedly found that blanket requests are not valid OPRA requests. In the matter of Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009), the relevant part of the complainant’s request sought:

⁴ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

2. Item No. 2: “From the Borough Engineer’s files: all engineering documents for all developments or modifications to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
3. Item No. 3: From the Borough Engineer’s files: all engineering documents for all developments or modifications to North St., to the south and east of Wilson St.
4. Item No. 4: From the Borough Attorney’s files: all documents related to the development or modification to Block 25, Lot 28; Block 25, Lot 18; Block 23, Lot 1; Block 23, Lot 1.02.
5. Item No. 5: From the Borough Attorney’s files: all documents related to the development or modification to North Street, to the south and east of Wilson St.”

In reviewing the complainant’s request, the Council found that “[b]ecause the complainant’s OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the custodian has not unlawfully denied access to the requested records pursuant to MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 549 (App. Div. 2005) and Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005).”

Notes, Reports, Proposals, Discussion Papers, Job Descriptions, Documents

In Bent, the court referenced MAG in that a requestor must specifically describe the document sought, because OPRA operates to make identifiable government records “accessible.” 381 N.J. Super. at 37. “As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency’s documents.” Id.

In the instant complaint, the Complainant identified specific types of records, namely reports, proposals, discussion papers, and job descriptions. However, the Complainant also requested more ambiguous records; “notes” and “documents.” Similar to the facts in Schuler, the Complainant failed to identify any titles, topics, or authors of the requested notes, reports, proposals, discussion papers, and documents. GRC No. 2007-151. Furthermore, it is unknown whether the Complainant sought the job descriptions of committee members with the ITTCC, its staff, or both. Just as a complainant cannot request all “e-mails” of an agency without additional parameters, he cannot similarly request all “reports” from an agency without additional identifying information. *See* Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); *see also* MAG, 375 N.J. Super. at 549, Bent 381 N.J. Super. at 30.

Therefore, the Complainant’s OPRA request seeking notes, reports, proposals, discussion papers, job descriptions, and documents is overly broad and failed to specifically identify the records sought. OPRA obligates requestors to reasonably identify the documents requested, and identifying only the type of record sought is insufficient pursuant to MAG 375 N.J. Super. 549, Bent, 381 N.J. Super. 37, and Schuler GRC No. 2007-151.

Meeting Minutes & Agendas

The Council has repeatedly held that meeting minutes are subject to disclosure under OPRA. In Moore v. Twp. of Washington (Bergen), GRC Complaint No. 2002-72 (January 2003), the Council held that regular meeting minutes “are government records subject to public

access.” *See also* Kumka (Northern Valley Suburbanite) v. City of Englewood (Bergen), GRC Complaint No. 2007-07 (January 2010) (custodian failed to bear her burden of proving that the denial of access to records was authorized by law when she failed to respond to an OPRA request for meeting minutes). Similarly, the Council has held that agendas are subject to access under OPRA. *See* Donato v. Borough of Emerson, GRC Complaint No. 2005-125 (Interim Order dated February 28, 2007).

Unlike the Complainant’s request for other types of records discussed above, his request for meeting minutes and agendas are unambiguous. However, a blanket request for such records alone is insufficient. In Donato, the complainant requested the meeting minutes and agendas for the Emerson Borough Council for the years 2003-2005. Id. at 1. The Council found that because the complainant identified specific dates of the requested meeting minutes and agendas, the custodian would not have to conduct research into the specific content within the minutes and agendas in response to the OPRA request. Id. at 15 (*citing* MAG, 375 N.J. Super. at 546). The Council therefore held that the complainant “clearly” identified the specific records sought, and the custodian should have searched the agency’s files to determine if the requested meeting minutes and agendas existed. Id. at 15.

Here, the Complainant requested “all agendas, minutes . . . produced for the [ITTCC] from its inception to the present day[.]” ‘Present day’ in this matter is March 13, 2014, the day the Complainant submitted his OPRA request. Similarly, it is not unreasonable to interpret “from its inception” as the minutes and agenda from the ITTCC’s first meeting. Even assuming the Custodian does not know the exact date of the ITTCC’s first meeting, ascertaining such knowledge would not rise to the conduct of “research” as defined under MAG.

The evidence of record demonstrates that the Custodian unlawfully denied access to the minutes and agendas of the ITTCC from the date of its inception to the present (March 13, 2014). N.J.S.A. 47:1A-6. A request for a committee’s agendas and minutes with date ranges are identifiable records pursuant to Moore, GRC No. 2002-72, Kumka, GRC No. 2007-07, and Donato, GRC No. 2005-125. The Custodian shall disclose any responsive records.

Knowing & Willful

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant’s OPRA request seeking notes, reports, proposals, discussion papers, job descriptions and documents is overly broad and failed to specifically identify the records sought. OPRA obligates requestors to reasonably identify the documents requested, and identifying only the type of record sought is insufficient pursuant to MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J.

Super. 534, 549 (App. Div. 2005), Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

2. The evidence of record demonstrates that the Custodian unlawfully denied access to the minutes and agendas of the Information Technology Title Consolidation Committee from the date of its inception to the present (March 13, 2014). N.J.S.A. 47:1A-6. A request for a committee's agendas and minutes with date ranges are identifiable records pursuant to Moore v. Twp. of Washington (Bergen), GRC Complaint No. 2002-72 (January 2003), Kumka (Northern Valley Suburbanite) v. City of Englewood (Bergen), GRC Complaint No. 2007-07 (January 2010), and Donato v. Borough of Emerson, GRC Complaint No. 2005-125 (Interim Order dated February 28, 2007). The Custodian shall disclose any responsive records.
3. **The Custodian shall comply with Item No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁵ to the Executive Director.⁶**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

Approved By: Dawn R. SanFilippo
Deputy Executive Director

March 24, 2015

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

⁶ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.