



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

February 21, 2017 Government Records Council Meeting

Gavin C. Rozzi
Complainant

Complaint No. 2015-224

v.

Lacey Township Board of Education (Ocean)
Custodian of Record

At the February 21, 2017 public meeting, the Government Records Council (“Council”) considered the February 14, 2017 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 current Custodian complied with the Council’s January 31, 2017 Interim Order because he responded in the prescribed time frame, refunded \$85.19 to the Complainant, and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian failed to bear his burden of proving that the special service charge of \$85.19 was reasonable and warranted. N.J.S.A. 47:1A-5(c); N.J.S.A. 47:1A-6. However, the current Custodian timely complied with the Council’s January 31, 2017 Interim Order. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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



Final Decision Rendered by the
Government Records Council
On The 21st Day of February, 2017

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 23, 2017

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
February 21, 2017 Council Meeting**

Gavin C. Rozzi¹
Complainant

GRC Complaint No. 2015-224

v.

Lacey Township Board of Education (Ocean)²
Custodial Agency

Records Relevant to Complaint: Electronic copies via e-mail of checks submitted to the Lacey Township Board of Education (“BOE”) by Custodian’s Counsel for payment of health benefits from 2010 through 2015.³

Custodian of Record: James G. Savage, Jr.⁴
Request Received by Custodian: May 19, 2015
Response Made by Custodian: May 27, 2015
GRC Complaint Received: July 22, 2015

Background

January 31, 2017 Council Meeting:

At its January 31, 2017 public meeting, the Council considered the January 24, 2017 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian’s assessed special service charge of \$85.19 to locate and duplicate the responsive records is unreasonable and unwarranted. N.J.S.A. 47:1A-5(c). Specifically, Ms. Hansen only expended a bit over half of one working day to locate and retrieve 37 pages of records from onsite storage, which were provided to the Complainant without redactions. Because the Complainant already paid the fee, which is unreasonable and unwarranted, the Custodian must refund that exact amount to the Complainant. *See Coulter v. Twp. of Bridgewater (Somerset)*, GRC Complaint No. 2008-220 (Interim Order dated November 18, 2009); White v. Monmouth Reg’l High Sch., GRC Complaint No. 2012-218 (Interim Order dated July 23, 2013).

¹ No legal representation listed on record.

² Represented by Arthur Stein, Esq., of Stein & Supsie, P.C. (Forked River, NJ).

³ The Complainant sought additional records that are not at issue in this complaint.

⁴ The current custodian of record is Patrick S. DeGeorge.

2. **The Custodian shall comply with item No. 2 above within five (5) business days from receipt of the Council's Interim Order, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁵ to the Executive Director.⁶**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On February 2, 2017, the Council distributed its Interim Order to all parties. On February 7, 2017, the Custodian responded to the Council's Interim Order. Therein, the Custodian certified that he refunded \$85.19 to the Complainant on February 6, 2017. The Custodian included as part of his supporting documentation an acknowledgement of receipt of payment signed by the Complainant.

Analysis

Compliance

At its January 31, 2017 meeting, the Council ordered the Custodian to refund \$85.19 to the Complainant and to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On February 2, 2017, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on February 9, 2017.

On February 7, 2017, the third (3rd) business day after receipt of the Council's Order, the current Custodian provided certified confirmation of compliance to the Executive Director indicating that he refunded \$85.19 to the Complainant on February 6, 2017.

Therefore, the current Custodian complied with the Council's January 31, 2017 Interim Order because he responded in the prescribed time frame, refunded \$85.19 to the Complainant, 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

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

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)).

In the instant matter, the Custodian failed to bear his burden of proving that the special service charge of \$85.19 was reasonable and warranted. N.J.S.A. 47:1A-5(c); N.J.S.A. 47:1A-6. However, the current Custodian timely complied with the Council’s January 31, 2017 Interim Order. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The current Custodian complied with the Council’s January 31, 2017 Interim Order because he responded in the prescribed time frame, refunded \$85.19 to the Complainant, and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian failed to bear his burden of proving that the special service charge of \$85.19 was reasonable and warranted. N.J.S.A. 47:1A-5(c); N.J.S.A. 47:1A-6. However, the current Custodian timely complied with the Council’s January 31, 2017 Interim Order. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the

level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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

February 14, 2017



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

January 31, 2017 Government Records Council Meeting

Gavin C. Rozzi
Complainant

Complaint No. 2015-224

v.

Lacey Township Board of Education (Ocean)
Custodian of Record

At the January 31, 2017 public meeting, the Government Records Council (“Council”) considered the January 24, 2017 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian’s assessed special service charge of \$85.19 to locate and duplicate the responsive records is unreasonable and unwarranted. N.J.S.A. 47:1A-5(c). Specifically, Ms. Hansen only expended a bit over half of one working day to locate and retrieve 37 pages of records from onsite storage, which were provided to the Complainant without redactions. Because the Complainant already paid the fee, which is unreasonable and unwarranted, the Custodian must refund that exact amount to the Complainant. *See Coulter v. Twp. of Bridgewater (Somerset)*, GRC Complaint No. 2008-220 (Interim Order dated November 18, 2009); White v. Monmouth Reg’l High Sch., GRC Complaint No. 2012-218 (Interim Order dated July 23, 2013).
2. **The Custodian shall comply with item No. 2 above within five (5) business days from receipt of the Council’s Interim Order, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

¹ “I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.”

² Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.



Interim Order Rendered by the
Government Records Council
On The 31st Day of January, 2017

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 2, 2017

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 31, 2017 Council Meeting**

**Gavin C. Rozzi¹
Complainant**

GRC Complaint No. 2015-224

v.

**Lacey Township Board of Education (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of checks submitted to the Lacey Township Board of Education (“BOE”) by Custodian’s Counsel for payment of health benefits from 2010 through 2015.³

Custodian of Record: James G. Savage, Jr.⁴

Request Received by Custodian: May 19, 2015

Response Made by Custodian: May 27, 2015

GRC Complaint Received: July 22, 2015

Background⁵

Request and Response:

On May 19, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 27, 2015, the Custodian responded in writing, stating that the BOE is charging \$64.05 to retrieve and duplicate the responsive records. The Custodian requested that, before the BOE commenced duplicating records, the Complainant advise whether he agreed to the fee. The Custodian noted that, should the actual amount of time either increase or decrease, the BOE would adjust the fee accordingly.

On June 16, 2015, the Complainant acquiesced to the fee. On June 25, 2015, the Custodian responded in writing, stating that the final total cost to produce responsive records was \$91.09, which included labor and copying costs. The Custodian further requested that the Complainant call and schedule an appointment to retrieve the responsive records.

¹ No legal representation listed on record.

² Represented by Arthur Stein, Esq., of Stein & Supsie, P.C. (Forked River, NJ).

³ The Complainant sought additional records that are not at issue in this complaint.

⁴ The current custodian of record is Patrick S. DeGeorge.

⁵ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Denial of Access Complaint:

On July 22, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argued that the proposed special service charge was unreasonable. The Complainant further asserted that the record did not support that the BOE actually incurred the proposed fee to provide the responsive records.

The Complainant noted that the responsive checks would be readily available were the BOE following proper record-keeping and accounting protocols. The Complainant asserted that his request simply did not require an “extraordinary amount” of time and effort to fulfill, which is the threshold under OPRA to charge a special service charge. N.J.S.A. 47:1A-5(c).

Statement of Information:

On August 7, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 19, 2015. The Custodian certified that he responded in writing on May 27, 2015, informing the Complainant of the potential cost to produce the responsive records. The Custodian affirmed that, after the Complainant agreed to fee, he again responded on June 25, 2015, providing the responsive records to the Complainant pending payment of a special service charge in the amount of \$91.09.

The Custodian stated that the Complainant did not raise an unlawful denial to the responsive checks. Rather, the Custodian stated that the Complainant contended the proposed special service charge was unreasonable. The Custodian contended that the Complainant provided no evidence to support his assertion. The Custodian asserted that the fee was both reasonable and foreseen, based on his review of the BOE’s records prior to his response.

The Custodian contended that locating and retrieving responsive records required an extraordinary expenditure of time and effort. Specially, the Custodian certified that the responsive checks were in physical storage. The Custodian averred that providing the responsive records required a painstaking process. The Custodian affirmed that the responsive checks were comingled among many checks remitted to the BOE for payment since 2010. The Custodian averred that the checks were not stored in a readily accessible manner because they were not submitted in response to a purchase order. The Custodian noted that this is significant because the BOE alphabetizes checks associated with purchase orders by vendor or entity. However, the responsive checks at issue here, received in the context of payroll, were stored monthly in separate folders containing many individual proofs of payment. The Custodian affirmed that at the end of a fiscal year, the BOE boxes the monthly files and sends them to storage. The Custodian certified that Chris Hansen, the employee tasked with retrieving checks from storage, had to go to storage, locate the payroll folder in each box, and review “dozens of voluminous files” page by page to locate the responsive checks.

The Custodian certified that he calculated the estimated cost by calculating Ms. Hansen’s hourly wage of \$18.93 in addition to the per page copy cost of duplicating the records, which amounted to \$64.05. The Custodian certified that he advised the Complainant of the proposed fee

and noted that same was subject to change. The Custodian certified that the final cost, \$91.09 comprised of the following:

Item No. 1 (not at issue here): 72 pages at \$0.05 per page =	\$3.60
Item No. 2 : 37 pages at \$0.05 per page =	\$1.85
4 hours at \$18.93 per hour =	\$85.19
Item No. 3 (not at issue here): 9 pages at \$0.05 per page =	<u>\$0.45</u>
Total	\$91.09 ⁶

The Custodian contended that the per page copy cost was consistent with N.J.S.A. 47:1A-5(b). Further, the Custodian argued that the special service charge was consistent with N.J.S.A. 47:1A-5(c); Fisher v. Div. of Law, 400 N.J. Super. 61 (App. Div. 2008); Burnett v. Cnty. of Bergen, 198 N.J. 408, 438 (2009). The Custodian also asserted that in Fisher, 400 N.J. Super. at 61, the Court only looked at whether the hourly rate was appropriate based on the lowest paid employees required to do the work, not whether the method of calculation was appropriate.

Moreover, the Custodian stated that Ms. Hansen provided a legal certification describing her work to support the hourly rate charge to respond to the Complainant's OPRA request. Therein, Ms. Hansen certified that on June 24, 2015, the Custodian instructed her to review files containing checks to locate all those from 2010 through 2015 responsive to the Complainant's OPRA request. Ms. Hansen affirmed that it took her over four (4) hours to review the files, locate the responsive checks, and retrieve them for duplication. Ms. Hansen certified that the BOE derived the hourly rate from her annual salary of \$31,801 spread over 240 working days at 7 hours a day.

Additional Submissions:

On December 28 2016, the GRC sought additional information from the Complainant. Specifically, the GRC stated that the Custodian certified that he provided all responsive records to the Complainant but did not include evidence supporting this disclosure. Further, the GRC noted that it was unclear whether the Complainant paid the special service charge. Based on this, the GRC requested that the Complainant submit a legal certification answering the following:

1. Did the Custodian provide all responsive records to you as part of his June 25, 2015 written response, as he certified to in the SOI?
2. Did you remit payment in the amount of \$91.09 at any point prior to or after initiating this complaint? Please provide supporting documentation of this payment, if you maintain any.

The GRC required the Complainant to submit the requested legal certification by close of business on January 3, 2017.

⁶ The GRC notes that, although the Complainant did not identify request item Nos. 1 and 3 as at issue in his Denial of Access Complaint, the GRC includes the total calculation to indicate the exact amount of the special service charge at issue here: \$85.19.

On the same day, the Complainant responded to the GRC's request for additional information. The Complainant certified that he retrieved the responsive records in person at the BOE prior to filing this complaint. The Complainant affirmed that he paid \$91.09 in cash and received a receipt from Noelle Natoli. The Complainant noted that he was unable to locate the receipt at this time.

Analysis

Special Service Charge

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

Whenever a records custodian asserts that fulfilling an OPRA request requires an "extraordinary" expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides:

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the public agency may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies . . .

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

The determination of what constitutes an "extraordinary expenditure of time and effort" under OPRA must be made on a case by case basis and requires an analysis of the variety of factors discussed in The Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002). There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the "extraordinary burden" placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian's time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an "extraordinary expenditure of time and effort to accommodate" pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records

sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

The Court determined that in the context of OPRA, the term “extraordinary” will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. Id. at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” Id.

Additionally, in complaints where the complainant paid an assessed fee and the Council subsequently determined that the fee was unwarranted or unreasonable, the Council has ordered the public agency to refund monies to complainant. *See Coulter v. Twp. of Bridgewater (Somerset)*, GRC Complaint No. 2008-220 (Interim Order dated November 18, 2009)(*citing Janney v. Estell Manor City (Atlantic)*, GRC Complaint No. 2006-205 (January 2008))(holding that the assessed special service charge was unreasonable and ordering the Custodian to refund the difference between the \$5.00 fee and the actual cost of \$0.96 (or \$4.04)); *White v. Monmouth Reg'l High Sch.*, GRC Complaint No. 2012-218 (Interim Order dated July 23, 2013).

Here, the Complainant disputed the \$85.19 charge for the BOE to locate and disclose 37 pages of records without redactions. The Complainant argued that the charge was unreasonable because the responsive records should have been readily available. The Complainant also asserted that, had the BOE followed proper record-keeping and accounting protocols, retrieving and producing the responsive checks would not have required an “extraordinary amount of time and effort.”

Conversely, the Custodian argued in the SOI that the fee was warranted because of the amount of time spent to fulfill the request. He certified that Ms. Hansen took four (4) hours to locate 37 pages of records. Ms. Hansen also submitted a legal certification corroborating the amount of time it took her to locate the responsive checks. The Custodian noted that an immense amount of work went into locating and retrieving the responsive records, some, if not most, of which were in storage. The Custodian certified that Ms. Hansen was required to go through boxes in physical storage to locate a payroll file wherein she had to review every page in the file to locate the checks. The GRC notes that the Custodian did not indicate that physical storage was offsite.

Thus, the GRC must determine whether the assessed charge was reasonable and warranted. When special service charges are at issue, the GRC will typically require a custodian to complete a 14-point analysis questionnaire prior to making a determination on the reasonableness of the charge. However, the Custodian provided enough information in the SOI to allow the GRC to forego requiring the completion of the analysis questionnaire.

The Complainant’s OPRA requests sought one type of record, checks for health care premiums, over a five (5) year period. In the SOI, the Custodian certified that the BOE placed

boxes containing payroll files where the responsive checks were located in physical storage at the end of a fiscal year. However, the Custodian did not indicate whether the BOE utilizes calendar years or some other time frame as a fiscal year. This fact would have been useful in determining to the exact number of records in storage. Ultimately, the Custodian certified that he provided 37 pages of records to the Complainant with no redactions. The Custodian certified that Ms. Hansen expended four (4) hours of a seven (7) hour workday locating and retrieving the responsive checks, presumably from onsite physical storage. Indeed, the BOE appears to have the resources to accommodate the request: the full-time student population exceeds 3,000, and the annual operating budget exceeds \$60 million.⁷ Given the amount of time expended, just over half a working day, in tandem with the number of responsive records (37 pages) that were not redacted, and the resources available to the school district, the evidence of record does not support that the special service charge was warranted or reasonable due to an “extraordinary amount of time and effort.” Based on the foregoing and the evidence of record, the Custodian fails to persuade the GRC that the BOE engaged in an “extraordinary amount of time and effort” to produce the responsive checks; thus, the charge of \$85.19 was unreasonable and unwarranted.

Accordingly, the Custodian’s assessed special service charge of \$85.19 to locate and duplicate the responsive records is unreasonable and unwarranted. N.J.S.A. 47:1A-5(c). Specifically, Ms. Hansen only expended a bit over half of one working day to locate and retrieve 37 pages of records from onsite storage, which were provided to the Complainant without redactions. Because the Complainant already paid the fee, which the GRC finds unreasonable and unwarranted, the Custodian must refund that exact amount to the Complainant. *See Coulter*, GRC 2008-220; *White*, GRC 2012-218.

Finally, the GRC notes that the Complainant expressly sought electronic copies of the responsive records via e-mail. Notwithstanding the Complainant’s preferred method of delivery, the Custodian included \$5.90 in copying costs as part of the overall cost and advised the Complainant to schedule an appointment to retrieve responsive records in hardcopy. The GRC has previously determined that a custodian’s failure to address a requestor’s preferred method of delivery resulted in an insufficient response. N.J.S.A. 47:1A-5(g); O’Shea v. Twp. of Fredon (Sussex), GRC Complaint No. 2007-251 (February 2008); Paff v. Borough of Sussex (Sussex), GRC Complaint No. 2008-38 (July 2008). However, the GRC declines to address this issue because the Complainant did not raise it in the Denial of Access Complaint. Additionally, because the Complainant retrieved the paper copies prior to filing this complaint, the GRC declines to allow for a refund of the \$5.90 in copy costs.

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.

⁷ http://www.laceyschools.org/files/_QDCNL_/6d3051ff6d224c4a3745a49013852ec4/LTSD_2016-2017_User_Friendly_Budget.pdf

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's assessed special service charge of \$85.19 to locate and duplicate the responsive records is unreasonable and unwarranted. N.J.S.A. 47:1A-5(c). Specifically, Ms. Hansen only expended a bit over half of one working day to locate and retrieve 37 pages of records from onsite storage, which were provided to the Complainant without redactions. Because the Complainant already paid the fee, which is unreasonable and unwarranted, the Custodian must refund that exact amount to the Complainant. *See Coulter v. Twp. of Bridgewater (Somerset)*, GRC Complaint No. 2008-220 (Interim Order dated November 18, 2009); White v. Monmouth Reg'l High Sch., GRC Complaint No. 2012-218 (Interim Order dated July 23, 2013).
2. **The Custodian shall comply with item No. 2 above within five (5) business days from receipt of the Council's Interim Order, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁸ to the Executive Director.⁹**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

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

January 24, 2017

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