



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS

101 SOUTH BROAD STREET

PO BOX 819

TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

October 31, 2017 Government Records Council Meeting

Aakash Dalal
Complainant

Complaint No. 2016-116

v.

County of Bergen
Custodian of Record

At the October 31, 2017 public meeting, the Government Records Council (“Council”) considered the October 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 did not fully comply with the Council’s June 27, 2017 Interim Order. Specifically, although the Custodian responded in the prescribed time frame, providing to the GRC nine (9) copies of the unredacted legal bills and simultaneously providing certified confirmation of compliance to the Executive Director, she did not provide nine (9) copies of the redacted bills as ordered.
2. **The *In Camera* Examination set forth above reveals the Custodian has lawfully denied access to the redacted portions of the records with the exception of the June 24, 2015 entry in the July 14, 2015 legal bill. N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure because the Complainant acknowledged in his Denial of Access Complaint that he deciphered the redaction.**
3. The Custodian unlawfully denied access to the redacted portion of the June 24, 2015 entry in the July 14, 2015 legal bill and she did not fully comply with the Council’s June 27, 2017 Interim Order. However, the Custodian lawfully denied access to all other redacted portions of the responsive July 14, 2015, February 4, 2016, and March 8, 2016 legal bills. 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 an 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 31st Day of October, 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: November 2, 2017

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director
October 31, 2017 Council Meeting**

**Aakash Dalal¹
Complainant**

GRC Complaint No. 2016-116

v.

**County of Bergen²
Custodial Agency**

Records Relevant to Complaint: Hard copies via U.S. mail of legal bills from Genova, Burns, LLC., dated July 14, 2015, February 4, 2016, and March 2016, for work performed in civil actions involving Bergen County Prosecutor Joseph Molinelli, the Bergen County Prosecutor's Office ("BCPO"), or that office's personnel.³

Custodian of Record: Christina D'Aloia, Esq.
Request Received by Custodian: March 21, 2016
Response Made by Custodian: March 23, 2016
GRC Complaint Received: April 18, 2016

Records Submitted for *In Camera* Examination: Legal billing records, dated July 14, 2015, February 4, 2016, and March 8, 2016.

Background

June 27, 2017 Council Meeting:

At its June 27, 2017 public meeting, the Council considered the June 20, 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 GRC must conduct an *in camera* review of the responsive July 14, 2015, February 4, 2016, and March 2016 bills to determine the validity of the Custodian's assertion that the redacted portions of same are subject to attorney-client privilege exemption under OPRA. See Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005); N.J.S.A. 47:1A-1.1.

¹ No legal representation listed on record.

² No legal representation listed on record.

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

2. **The Custodian must deliver⁴ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 1 above), nine (9) copies of the redacted records, a document or redaction index⁵, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,⁶ 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.**
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 June 29, 2017, the Council distributed its Interim Order to all parties. On July 5, 2017, the Custodian responded to the Council's Interim Order. Therein, the Custodian provided to the Government Records Council ("GRC") nine (9) copies of the unredacted invoices sought for an *in camera* review. The Custodian noted that she redacted information regarding specific details regarding research and subject matters that would have revealed litigation strategy, mental impressions, legal opinions, and other protected information. N.J.S.A. 47:1A-1.1. The Custodian noted that she also redacted tax identification ("ID") numbers. N.J.S.A. 47:1A-1.1. The Custodian also simultaneously provided certified confirmation of compliance to the Executive Director.

Analysis

Compliance

At its June 27, 2017 meeting, the Council ordered the Custodian to submit nine (9) redacted copies of the subject legal bills, as well as nine (9) copies of the unredacted legal bills, for an *in camera* review. Further, the Council ordered the Custodian to provide certified confirmation of compliance simultaneously to the Executive Director. On June 29, 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 July 7, 2017.

On July 5, 2017, the third (3rd) business day after receipt of the Council's Order, the Custodian provided to the GRC nine (9) copies of the unredacted legal bills required for an *in camera* review. The Custodian also simultaneously provided certified confirmation of

⁴ 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.

⁵ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁶ "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."

compliance to the Executive Director. However, the Custodian was also required to provide nine (9) copies of the redacted bills, which she did not.

Therefore, the Custodian did not fully comply with the Council's June 27, 2017 Interim Order. Specifically, although the Custodian responded in the prescribed time frame, providing to the GRC nine (9) copies of the unredacted legal bills and simultaneously providing certified confirmation of compliance to the Executive Director, she did not provide nine (9) copies of the redacted bills as ordered.

Unlawful Denial of Access

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

OPRA provides that:

A government record shall not include the following information which is deemed to be confidential . . . any record within the attorney-client privilege. This paragraph shall not be construed as exempting from access attorney or consultant bills or invoices except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege.

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

Here, the Complainant challenged the relevant redactions, arguing that the Custodian could not make a clear showing that the redactions were lawful. The Complainant noted one example in the July 14, 2015 legal bill where he was able to decipher the partially redacted material in support of his claim. The Complainant also asserted that the GRC should consider the Supreme Court's decision in O'Boyle v. Borough of Longport, 218 N.J. 168, 186 (2014), stating that "[t]he privilege must yield, however, in furtherance of 'overriding public policy concerns' . . ." (*Citations omitted*). Conversely, the Custodian contended that she lawfully redacted the bills because of ongoing litigation in Harrington v. Cnty. of Bergen, et als. The Custodian contended that each redaction contained legal strategies and details, the disclosure of which would reveal the nature and extent of attorney-client communications. Finally, the Custodian noted that she redacted the tax ID number for Genova, Burns, LLC.

Upon review of the unredacted legal bills, the Complainant's assertion that the Custodian unlawfully denied access to the redacted portion of the June 24, 2015 entry in the July 14, 2015 legal bill was justified. Specifically, that entry indicated that legal counsel reviewed a Supreme Court decision involving Prosecutor John L. Molinelli. However, this review does not appear to be linked to any case, type of strategy, or legal advice. Simply memorializing a review of a Supreme Court decision does not inherently fall within the attorney-client privilege exemption.

Thus, absent any explanation from the Custodian to the contrary, she unlawfully redacted this portion of the legal bill.

However, a review of the remaining information reveals that the Custodian redacted information consistent with her Statement of Information assertion that it was attorney-client privileged. The redacted material includes specific details about legal counsel's work in reference to Harrington, the disclosure of which would necessarily reveal strategy and/or legal advice pertaining to the case. Thus, the GRC is satisfied that the Custodian lawfully redacted all remaining information under the attorney-client privilege exemption.

Accordingly, the Custodian unlawfully denied access to the redacted portion of the June 24, 2015 entry contained in the July 14, 2015 legal bill. For this redaction, there appears to be no connection to the attorney-client privilege inherent in reviewing a Supreme Court decision involving a client. Notwithstanding the foregoing, the GRC declines to order disclosure of the bill without the redaction because the Complainant acknowledged in his Denial of Access Complaint that he was able to decipher it. Regarding the remaining redactions, the Custodian lawfully denied access to them. Specifically, the redacted descriptions in the legal bills constituted attorney-client privileged material. N.J.S.A. 47:1A-1.1.

Finally, the GRC will not address the tax ID number redactions because the Complainant did not take issue with them at any point during the pendency of this complaint.

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)).

In the instant matter, the Custodian unlawfully denied access to the redacted portion of the June 24, 2015 entry in the July 14, 2015 legal bill and she did not fully comply with the Council's June 27, 2017 Interim Order. However, the Custodian lawfully denied access to all other redacted portions of the responsive July 14, 2015, February 4, 2016, and March 8, 2016 legal bills. 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 an 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 did not fully comply with the Council's June 27, 2017 Interim Order. Specifically, although the Custodian responded in the prescribed time frame, providing to the GRC nine (9) copies of the unredacted legal bills and simultaneously providing certified confirmation of compliance to the Executive Director, she did not provide nine (9) copies of the redacted bills as ordered.
2. **The *In Camera* Examination set forth above reveals the Custodian has lawfully denied access to the redacted portions of the records with the exception of the June 24, 2015 entry in the July 14, 2015 legal bill. N.J.S.A. 47:1A-6. However, the GRC declines to order disclosure because the Complainant acknowledged in his Denial of Access Complaint that he deciphered the redaction.**
3. The Custodian unlawfully denied access to the redacted portion of the June 24, 2015 entry in the July 14, 2015 legal bill and she did not fully comply with the Council's June 27, 2017 Interim Order. However, the Custodian lawfully denied access to all other redacted portions of the responsive July 14, 2015, February 4, 2016, and March 8, 2016 legal bills. 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 an unreasonable denial of access under the totality of the circumstances.

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

October 24, 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

June 27, 2017 Government Records Council Meeting

Aakash Dalal
Complainant

Complaint No. 2016-116

v.

County of Bergen
Custodian of Record

At the June 27, 2017 public meeting, the Government Records Council (“Council”) considered the June 20, 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 GRC must conduct an *in camera* review of the responsive July 14, 2015, February 4, 2016, and March 2016 bills to determine the validity of the Custodian’s assertion that the redacted portions of same are subject to attorney-client privilege exemption under OPRA. See Paff v. NJ Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005); N.J.S.A. 47:1A-1.1.
2. **The Custodian must deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 1 above), nine (9) copies of the redacted records, a document or redaction index², 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.**
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 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.”



Interim Order Rendered by the
Government Records Council
On The 27th Day of June, 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: June 29, 2017

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 27, 2017 Council Meeting**

**Aakash Dalal¹
Complainant**

GRC Complaint No. 2016-116

v.

**County of Bergen²
Custodial Agency**

Records Relevant to Complaint: Hard copies via U.S. mail of legal bills from Genova, Burns, LLC. dated July 14, 2015, February 4, 2016, and March 2016, for work performed in civil actions involving Bergen County Prosecutor Joseph Molinelli, the Bergen County Prosecutor's Office ("BCPO"), or that office's personnel.³

Custodian of Record: Christina D'Aloia, Esq.
Request Received by Custodian: March 21, 2016
Response Made by Custodian: March 23, 2016
GRC Complaint Received: April 18, 2016

Background⁴

Request and Response:

On March 18, 2016, the Complainant submitted an Open Public Records Act ("OPRA") request to the BCPO seeking the above-mentioned records. On March 21, 2016, the BCPO wrote to the Complainant, advising that it forwarded the subject OPRA request to Bergen County ("County") Counsel's office for a response because that agency retained Genova, Burns, LLC, to represent the BCPO in various matters.

On March 23, 2016, the Custodian responded in writing, stating that she located responsive records and would provide them upon payment of the appropriate copying costs. The Custodian noted that she redacted all tax identification numbers and attorney-client privileged information. N.J.S.A. 47:1A-1.1.

¹ No legal representation listed on record.

² "No legal representation listed on record."

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

⁴ 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 April 18, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant argued that the Custodian unlawfully redacted the responsive legal bills. The Complainant provided an example of a redaction in an entry from July 14, 2015, that did not fit the privilege, noting that the contents were partially decipherable in the records provided to him.

The Complainant contended that the Custodian had clear reasons to redact the invoices unlawfully: to protect information about Mr. Molinelli’s purported harassment of an employee from reaching the public domain. The Complainant argued that the bills also reveal that Mr. Molinelli still had direct contact with Genova, Burns, LLC, at a great waste to tax payer dollars, even though he was no longer with the BCPO. The Complainant thus argued that the Custodian would not be able to make a “clear showing” that the attorney-client privilege exemption applied to the redacted entries. Tractenberg v. Twp. of West Orange, 416 N.J. Super. 354, 378-379 (App. Div. 2010). The Complainant further argued that, even if the GRC determined that the Custodian properly redacted the bills, it should consider the Supreme Court’s recent statements in O’Boyle v. Borough of Longport, 218 N.J. 168, 186 (2014) (providing that the attorney-client “privilege must yield . . . in furtherance of ‘overriding public policy concerns[.]’”).

Statement of Information:

On May 10, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on March 21, 2016. The Custodian certified that her search included directing support staff to search the County’s electronic filing systems for the physical location of the responsive records, at which time they were able to retrieve them. The Custodian certified that she responded in writing on March 23, 2016, providing access to redacted copies of the responsive records pending payment of copy costs.

The Custodian noted that, notwithstanding OPRA’s clear requirement that a custodian disclose legal bills, the GRC routinely upheld a public agency’s authority to redact protected information. See Fisher v. Twp. of Cedar Grove, GRC Complaint No. 2002-34 (July 2003); Wicks v. Bernards Twp. Bd. of Educ., GRC Complaint No. 2002-107 (December 2003); Seibert v. Reading Twp., GRC Complaint No. 2004-150 (July 2007). The Custodian noted that the attorney-client privilege is also statutory in New Jersey. N.J.S.A. 2A:84A-20. The Custodian stated that the Appellate Division addressed this statutory right in Paff v. Div. of Law, 412 N.J. Super. 140 (App. Div. 2010), when determining that unpublished administrative agency advice letters were not subject to disclosure under OPRA. The Custodian noted that, in reaching its decision, the Appellate Division reasoned that government agencies have the same need for “sound legal advice” as a private client and that attorney-client communication confidentiality is in the public interest. Paff, 412 N.J. Super. at 27-28.

The Custodian contended that the Complainant filed the instant complaint to challenge her redaction of billing information in the matter of Harrington v. Cnty. of Bergen, et als. The Custodian affirmed that Harrington was still active in the Federal Court system. The Custodian argued that the County’s position remained that the redactions were appropriate because they

contain legal strategies and details, the disclosure of which would reveal the nature and extent of attorney-client communications.

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.

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 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.

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

Here, the Complainant disputed redactions made to three (3) attorney bills. Both in her response and the SOI, the Custodian contended that she properly redacted these bills under the attorney-client privilege. N.J.S.A. 47:1A-1.1. However, the GRC must review same in order to determine the full applicability of the attorney-client privilege to the redacted portions of the responsive bills. Such an action is not uncommon, as the GRC will routinely perform an *in camera* review in similar circumstances. Rivera v. City of Camden (Camden), GRC Complaint No. 2010-182 (Interim Order January 31, 2012); Skidmore v. Lebanon Twp. (Hunterdon), GRC Complaint No. 2013-194 (Interim Order dated January 28, 2014); Sorce v. Stafford Twp. (Ocean), GRC Complaint No. 2014-109 (Interim Order dated January 30, 2015).

Therefore, the GRC must conduct an *in camera* review of the responsive July 14, 2015, February 4, 2016, and March 2016 legal bills to determine the validity of the Custodian's assertion that the redacted portions of same are subject to attorney-client privilege exemption under OPRA. *See Paff*, 379 N.J. Super. at 346; N.J.S.A. 47:1A-1.1.

Knowing & Willful

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The GRC must conduct an *in camera* review of the responsive July 14, 2015, February 4, 2016, and March 2016 bills to determine the validity of the Custodian's assertion that the redacted portions of same are subject to attorney-client privilege exemption under OPRA. *See Paff v. NJ Dep't of Labor, Bd. of Review*, 379 N.J. Super. 346 (App. Div. 2005); N.J.S.A. 47:1A-1.1.
2. **The Custodian must deliver⁶ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 1 above), nine (9) copies of the redacted records, a document or redaction index⁷, 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.**

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."

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

June 20, 2017