



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 31, 2019 Government Records Council Meeting

Charles Cohen
Complainant

Complaint No. 2016-253

v.

City of Englewood (Bergen)
Custodian of Record

At the January 31, 2019 public meeting, the Government Records Council (“Council”) considered the January 22, 2019 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 the Council dismiss the complaint because the Complainant withdrew the matter via letter to the Office of Administrative Law on December 26, 2018. Therefore, no further adjudication is required.

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 January, 2019

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 5, 2019



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Council Staff
January 31, 2019 Council Meeting**

**Charles R. Cohen¹
Complainant**

GRC Complaint No. 2016-253

v.

**City of Englewood (Bergen)²
Custodial Agency**

Records Relevant to Amended Complaint: Electronic copies via e-mail of:

1. Memo from City Staff Engineer Christopher Hanna, dated November 20, 2015.
2. Unredacted Daily Progress Reports in lieu of obviously redacted document that was provided.
3. All other documents (descriptions currently unknown) which have not been disclosed.³

Custodian of Record: Yancy Wazirmas

Requests Received by Custodian: December 11, 2015 and August 18, 2016

Responses Made by Custodian: December 16, 2015 and August 29, 2016

GRC Complaint Received: September 8, 2016

Amended GRC Complaint Received: September 16, 2016

Background

August 28, 2018 Council Meeting:

At its August 28, 2018 public meeting, the Government Records Council (“Council”) considered the August 21, 2018 Supplemental Findings and Recommendations of the Council Staff 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 November 14, 2017 Interim Order because the Custodian timely forwarded nine copies of the requested unredacted records, a document index, and a certification that the records provided are the records requested by the Council for an *in camera* examination.
2. Based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a

¹ No legal representation listed on record.

² Represented by William J. Bailey, Esq., of Huntington Bailey, LLP (Westwood, NJ).

³ There were other records requested that are not relevant to this complaint.

hearing to resolve the facts and determine (1) if the records disclosed to the Complainant were the records responsive to the request, and if so, were disclosed in unredacted form as asserted by the Custodian; and (2) if access was unlawfully denied, whether the Custodian or any other official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

3. It is not necessary for the Office of Administrative Law to determine whether the Complainant may be entitled to a reasonable attorney fee under OPRA because N.J.S.A. 47:1A-6 is intended to compensate an attorney hired to represent a plaintiff, not a plaintiff representing himself. Because the Complainant here is an attorney representing himself, he is not entitled to reasonable attorney's fees under OPRA. See Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006). See also Pitts v. NJ Dep't of Corr., GRC Complaint No. 2005-71 (April 2006).

Procedural History:

On August 29, 2018, the Council distributed its August 28, 2018 Interim Order to all parties. On November 21, 2018, the complaint was transmitted to the Office of Administrative Law ("OAL"). On December 26, 2018, the Complainant submitted a letter via e-mail to the OAL withdrawing the complaint. On January 7, 2019, the OAL returned the complaint back to the GRC marked "WITHDRAWAL."

Analysis

No analysis required.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council dismiss the complaint because the Complainant withdrew the matter via letter to the Office of Administrative Law on December 26, 2018. Therefore, no further adjudication is required.

Prepared By: John E. Stewart

January 22, 2019



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

August 28, 2018 Government Records Council Meeting

Charles R. Cohen
Complainant

Complaint No. 2016-253

v.

City of Englewood (Bergen)
Custodian of Record

At the August 28, 2018 public meeting, the Government Records Council (“Council”) considered the August 21, 2018 Supplemental Findings and Recommendations of the Council Staff 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 November 14, 2017 Interim Order because the Custodian timely forwarded nine copies of the requested unredacted records, a document index, and a certification that the records provided are the records requested by the Council for an *in camera* examination.
2. Based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts and determine (1) if the records disclosed to the Complainant were the records responsive to the request, and if so, were disclosed in unredacted form as asserted by the Custodian; and (2) if access was unlawfully denied, whether the Custodian or any other official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
3. It is not necessary for the Office of Administrative Law to determine whether the Complainant may be entitled to a reasonable attorney fee under OPRA because N.J.S.A. 47:1A-6 is intended to compensate an attorney hired to represent a plaintiff, not a plaintiff representing himself. Because the Complainant here is an attorney representing himself, he is not entitled to reasonable attorney’s fees under OPRA. See Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006). See also Pitts v. NJ Dep’t of Corr., GRC Complaint No. 2005-71 (April 2006).



Interim Order Rendered by the
Government Records Council
On The 28th Day of August, 2018

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: August 29, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Council Staff
August 28, 2018 Council Meeting**

**Charles R. Cohen¹
Complainant**

GRC Complaint No. 2016-253

v.

**City of Englewood (Bergen)²
Custodial Agency**

Records Relevant to Amended Complaint: Electronic copies via e-mail of:

1. Memo from City Staff Engineer Christopher Hanna, dated November 20, 2015.
2. Unredacted Daily Progress Reports in lieu of obviously redacted document that was provided.
3. All other documents (descriptions currently unknown) which have not been disclosed.³

Custodian of Record: Yancy Wazirmas

Requests Received by Custodian: December 11, 2015 and August 18, 2016

Responses Made by Custodian: December 16, 2015 and August 29, 2016

GRC Complaint Received: September 8, 2016

Amended GRC Complaint Received: September 16, 2016

Background

November 14, 2017 Council Meeting:

At its November 14, 2017 public meeting, the Government Records Council (“Council”) considered the November 8, 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 has lawfully denied access to the requested memo from Christopher Hanna, dated November 20, 2015, because said record was in draft form at the time of the Complainant’s request and thus exempt from disclosure as advisory, consultative, or deliberative material pursuant to N.J.S.A. 47:1A-1.1. See Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006), Kohn v. Township of Livingston, GRC Complaint No. 2007-319 (July 2008), Haemmerle v. Township of Washington, GRC Complaint No. 2006-106

¹ No legal representation listed on record.

² Represented by William J. Bailey, Esq., of Huntington Bailey, LLP (Westwood, NJ).

³ There were other records requested that are not relevant to this complaint.

(June 2007), and Edwards v. City of Jersey City, GRC Complaint No. 2002-71 (February 2004).

2. The GRC must conduct an *in camera* review of the responsive Daily Progress Reports to validate the Custodian's assertion that the records were disclosed to the Complainant in unredacted form. 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 paragraph #2 above), nine (9) copies of the redacted records, 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. In seeking "all other documents (descriptions currently unknown)" the Complainant has failed to identify specifically any records; therefore, the Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005), N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On November 16, 2017, the Council distributed its November 14, 2017 Interim Order to all parties. On November 21, 2017, the Custodian's Counsel telephoned the GRC to request an extension of time for the Custodian to comply with the Council's Interim Order. The GRC granted an additional five (5) business day extension of time for the Custodian to comply, which resulted in compliance being due on or before December 1, 2017. On November 30, 2017, the Custodian delivered to the GRC nine copies of the requested unredacted records, a document index, and a certification that the records provided are the records requested by the Council for the *in camera* inspection.

Additional Submissions:

On December 15, 2017, the GRC notified all parties that the complaint was scheduled for adjudication at the Council's December 19, 2017 public meeting. On December 18, 2017, the Complainant informed the GRC that he had not been copied with the Custodian's November 30, 2017 certification. The GRC subsequently provided the Complainant with a copy of the

certification and letter on December 18, 2017; however, the Complainant stated that he required a five (5)-business day opportunity to adequately review and more fully respond to the Custodian's letter and certification. During the December 19, 2017 Council meeting, the Council considered the Complainant's request and decided to table the complaint in order to provide the Complainant with five business days, until December 27, 2017, to respond to the certification.

By letter dated December 27, 2017, certified pursuant to R.1:4-4, the Complainant informed the GRC that on December 15, 2017, he came into possession of an e-mail dated September 9, 2016 from Christopher Hanna to Frantz Volcy, who is purportedly the City Engineer for the City of Englewood. The Complainant stated that attached to the e-mail was a different version of the Daily Progress Report than the one disclosed to him in response to his OPRA request. The Complainant identified the version of the Daily Progress Report attached to the September 9, 2016 e-mail as "*Version Two*." The Complainant attached to his letter a copy of *Version Two*.⁴

The Complainant stated that he does not know which version the Custodian forwarded to the GRC for the *in camera* inspection. The Complainant stated that if the version forwarded to the GRC is the same as the version the Custodian disclosed to him in response to his request, then a comparison of that copy with *Version Two* would indicate it is not the unredacted version. The Complainant further stated that if the version forwarded to the GRC is different than the version the Custodian disclosed to him in response to his request, then that difference would support the Complainant's contention that the Daily Progress Report disclosed to him was redacted. The Complainant stated that, in either event, the Daily Progress Report the Custodian disclosed to him was not complete. The Complainant stated that the Council should order the Custodian to disclose to him the complete and unredacted Daily Progress Report. The Complainant also requested that the Council deem him a prevailing party entitled to prevailing party attorney's fees.

On January 22, 2018, the GRC asked the Custodian's Counsel to have the City Engineer prepare a *detailed* legal certification which accounts for the discrepancy between the two versions of the Daily Progress Reports (emphasis in original). The GRC also asked the Custodian's Counsel to have the City Engineer include any documentary evidence that supports the averments in his certification.

On January 29, 2018, the Custodian's Counsel forwarded to the GRC Professional Engineer Frantz Volcy's certification addressing the discrepancy between the two versions of the Daily Progress Reports. Mr. Volcy averred that he is employed by T&M Associates, which is the firm that serves as the City Engineer for the City of Englewood. Mr. Volcy further certified that the Daily Progress Reports are constantly evolving documents, which are updated frequently by his firm's inspectors. Mr. Volcy certified that the Daily Progress Reports are internal documents designed for the inspectors to have a general sense of the activities that have taken place on a site. Mr. Volcy concluded by averring that the Daily Progress Reports are problematic

⁴ The GRC notes that there is clearly a difference in the content between the copy of the Daily Progress Report that was disclosed to the Complainant in response to his OPRA request and the copy of the Daily Progress Report identified as *Version Two*.

with respect to disclosure under OPRA because they are evolving records with entries made by different inspectors in an unchronological fashion at various times.

On February 6, 2018, the Complainant responded to Mr. Volcy's January 29, 2018 certification. The Complainant stated that Mr. Volcy's certification did not comply with the GRC's instructions because it failed to provide any detail to account for the differences between the two versions of the Daily Progress Reports. The Complainant asserted that the certification contained non-specific and speculative generalities. The Complainant further asserted that Mr. Volcy did not address the changes identified in the Complainant's December 27, 2017 letter that he certified to the GRC. The Complainant stated that, in view of the insufficient certification submitted by Mr. Volcy, the evidence of record in this matter is inadequate to reconcile the discrepancy in the two different Daily Progress Reports. The Complainant requests the complaint be referred to the Office of Administrative Law ("OAL") for a hearing to resolve the facts and determine whether the Custodian unlawfully denied access to the requested records. The Complainant also requests the complaint be referred to the OAL to determine whether he is entitled to a reasonable attorney fee, and if so, to award the fee.

Analysis

Compliance

On November 14, 2017, the Council ordered the above-referenced compliance. On November 16, 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. Therefore, compliance was due on or before November 24, 2017. On November 21, 2017, the Custodian's Counsel telephoned the GRC requesting an extension of time for the Custodian to comply with the Council's Interim Order. The GRC granted an additional five (5) business day extension of time for the Custodian to comply. Therefore, compliance was due on or before December 1, 2017. On November 30, 2017, the Custodian delivered to the GRC nine copies of the requested unredacted records, a document index, and a certification that the records provided are the records requested by the Council for the *in camera* inspection. The Custodian also attached a color copy of the Complainant's August 30, 2016 e-mail to the Custodian.⁵

Therefore, the Custodian complied with the Council's November 14, 2017 Interim Order because the Custodian timely forwarded nine copies of the requested unredacted records, a document index, and a certification that the records provided are the records requested by the Council for an *in camera* examination.

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

⁵ The Custodian certified that she could not submit nine (9) copies of the redacted records because no redacted records were disclosed to the Complainant.

“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.

In the instant matter, the Complainant submitted a certified statement to the GRC averring that there exists two (2) different versions of the requested Daily Progress Reports. The Complainant certified that he came into possession of a different version of the Daily Progress Report than the one disclosed to him in response to his OPRA request. The Complainant provided the GRC with a copy of the different version of the Daily Progress Report, and the GRC noted that its content was clearly different than the content contained in the copy of the Daily Progress Report that was disclosed to the Complainant in response to his OPRA request. For this reason, the GRC asked the Custodian’s Counsel to have the City Engineer prepare a detailed certification which accounts for the discrepancy between the two versions of the Daily Progress Reports. In reply, Engineer Frantz Volcy submitted a certification which averred merely that the Daily Progress Reports are evolving documents, frequently updated with entries made by different inspectors at various times. From the evidence of record, the GRC could not conclude that the records disclosed to the Complainant were those records that were responsive to the request or, if responsive to the request, were disclosed in unredacted form as asserted by the Custodian.

Therefore, based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the OAL for a hearing to resolve the facts and determine (1) if the records disclosed to the Complainant were the records responsive to the request, and if so, were disclosed in unredacted form as asserted by the Custodian; and (2) if access was unlawfully denied, whether the Custodian or any other official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prevailing Party Attorney’s Fees

The Complainant in his letter dated December 27, 2017, requested that the GRC deem him a prevailing party entitled to prevailing party attorney’s fees. Subsequently, in his February 6, 2018 letter responding to Mr. Volcy’s certification, the Complainant requested his complaint be referred to the OAL to determine, *inter alia*, whether he is entitled to reasonable attorney’s fees, and if so, for the OAL to award the fees. However, it is unnecessary for the GRC to ask the OAL to determine whether the Complainant is entitled to reasonable attorney’s fees because it is well settled that the Complainant is not entitled to such fees.

According to the Supreme Court of New Jersey, the New Jersey Legislature has promulgated a “substantial number of statutes authorizing an award of a reasonable counsel fee to the attorney for the prevailing party.” New Jerseyans for a Death Penalty Moratorium v. NJ Dep’t of Corr. and Devon Brown, 182 N.J. 628 (2005) (Decision without a published opinion), (quoting Rendine v. Pantzer, 141 N.J. 292 (1995)). Although the underlying purpose of those statutes may vary, they share a common rationale for incorporating a fee-shifting measure: to ensure “that plaintiffs with bona fide claims are able to find lawyers to represent them[,]... to attract competent counsel in cases involving statutory rights, ... and to ensure justice for all citizens.” New Jerseyans supra, quoting Coleman v. Fiore Bros., 113 N.J. 594, 598 (1989).

Thus, the courts of the state have determined that the state's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff, not an attorney who is the plaintiff representing himself.

In Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006), the requestor was an attorney requesting records to assist in litigation for which the requestor-attorney was otherwise hired. The Council held that “[b]ased on the fact that the courts of the state have determined that the state’s fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff *not an attorney who is the plaintiff representing himself*, the Complainant is not entitled to reasonable attorney’s fees pursuant to OPRA.” The Council reached a similar conclusion in Pitts v. NJ Dep’t of Corr., GRC Complaint No. 2005-71 (April 2006).

Here, the Complainant, a partner in the law firm of Cohn Lifland Pearlman Herrmann & Knopf LLP, submitted the OPRA requests under his name; not on behalf of a client. Additionally, the Complainant filed the Denial of Access Complaint under his name, and where prompted for the name of his client, he left the line blank. Moreover, there is nothing in the evidence of record to indicate that the Complainant is representing a client in this matter.

Therefore, it is not necessary for the OAL to determine whether the Complainant may be entitled to a reasonable attorney fee under OPRA because N.J.S.A. 47:1A-6 is intended to compensate an attorney hired to represent a plaintiff, not a plaintiff representing himself. Because the Complainant here is an attorney representing himself, he is not entitled to reasonable attorney’s fees under OPRA. See Boggia, GRC 2005-36. See also Pitts, GRC 2005-71.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian complied with the Council’s November 14, 2017 Interim Order because the Custodian timely forwarded nine copies of the requested unredacted records, a document index, and a certification that the records provided are the records requested by the Council for an *in camera* examination.
2. Based on the inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts and determine (1) if the records disclosed to the Complainant were the records responsive to the request, and if so, were disclosed in unredacted form as asserted by the Custodian; and (2) if access was unlawfully denied, whether the Custodian or any other official knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
3. It is not necessary for the Office of Administrative Law to determine whether the Complainant may be entitled to a reasonable attorney fee under OPRA because N.J.S.A. 47:1A-6 is intended to compensate an attorney hired to represent a plaintiff,

not a plaintiff representing himself. Because the Complainant here is an attorney representing himself, he is not entitled to reasonable attorney's fees under OPRA. See Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006). See also Pitts v. NJ Dep't of Corr., GRC Complaint No. 2005-71 (April 2006).

Prepared By: John E. Stewart

August 21, 2018



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

INTERIM ORDER

November 14, 2017 Government Records Council Meeting

Charles R. Cohen
Complainant

Complaint No. 2016-253

v.

City of Englewood (Bergen)
Custodian of Record

At the November 14, 2017 public meeting, the Government Records Council (“Council”) considered the November 8, 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 has lawfully denied access to the requested memo from Christopher Hanna, dated November 20, 2015, because said record was in draft form at the time of the Complainant’s request and thus exempt from disclosure as advisory, consultative, or deliberative material pursuant to N.J.S.A. 47:1A-1.1. See Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006), Kohn v. Township of Livingston, GRC Complaint No. 2007-319 (July 2008), Haemmerle v. Township of Washington, GRC Complaint No. 2006-106 (June 2007), and Edwards v. City of Jersey City, GRC Complaint No. 2002-71 (February 2004).
2. The GRC must conduct an *in camera* review of the responsive Daily Progress Reports to validate the Custodian’s assertion that the records were disclosed to the Complainant in unredacted form. 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 paragraph #2 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.**

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. In seeking “all other documents (descriptions currently unknown)” the Complainant has failed to identify specifically any records; therefore, the Complainant’s OPRA request is invalid because it fails to seek identifiable government records. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005), N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, pending the Custodian’s compliance with the Council’s Interim Order.

Interim Order Rendered by the
Government Records Council
On The 14th Day of November, 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 16, 2017

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 14, 2017 Council Meeting**

**Charles R. Cohen¹
Complainant**

GRC Complaint No. 2016-253

v.

**City of Englewood (Bergen)²
Custodial Agency**

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1. Memo from City Staff Engineer Christopher Hanna, dated November 20, 2015.
2. Unredacted Daily Progress Reports in lieu of obviously redacted document that was provided.
3. All other documents (descriptions currently unknown) which have not been disclosed.³

Custodian of Record: Yancy Wazirmas

Requests Received by Custodian: December 11, 2015, 2016 and August 18, 2016

Responses Made by Custodian: December 16, 2015⁴ and August 29, 2016

GRC Complaint Received: September 8, 2016

Amended GRC Complaint Received: September 16, 2016

Background⁵

Requests and Responses:

The Complainant states that he submitted Open Public Records Act (“OPRA”) requests to the Custodian dated December 11, 2015, January 11, 2016, February 1, 2016, March 3, 2016,

¹ No legal representation listed on record.

² Represented by William J. Bailey, Esq., of Huntington Bailey, LLP (Westwood, NJ).

³ There were other records requested that are not relevant to this complaint.

⁴ Although the Custodian certified in the Statement of Information that she responded to the December 11, 2015 request on December 18, 2015, the evidence of record reveals that on December 16, 2015, the Chief Construction Official, on behalf of the Custodian, responded to the Complainant’s request seeking clarification. The evidence of record further reveals that in lieu of clarification, the Complainant agreed to visit the municipality on December 18, 2015, at which time he would view the records and determine which records he needed. Although the Complainant requested that the responsive records be transmitted to him via e-mail, the December 11, 2015 request was so overly broad that if the Custodian decided not to deny the request out-of-hand as an invalid request, it is not unreasonable to offer the Complainant an on-site examination of potentially responsive records.

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.

and August 18, 2016, seeking the above-mentioned records.⁶ The Custodian certified that she only received two (2) OPRA requests from the Complainant: one on December 11, 2015, and one on August 18, 2016.

On December 16, 2015, the third (3rd) business day following receipt of the December 11, 2015 request, the Chief Construction Official, on behalf of the Custodian, responded in writing, seeking clarification of the request. On December 18, 2015, the Complainant provided clarification concurrent with an on-site examination of the records that could be responsive to the request.⁷ On August 29, 2016, the seventh (7th) business day following receipt of the August 18, 2016 request, the Custodian responded in writing, disclosing to the Complainant the record responsive to his request.

Denial of Access Complaint:

On September 8, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that several records were not disclosed to him; however he specifically identified only the following:

1. A memo from City Staff Engineer Christopher Hanna, dated November 20, 2015.
2. An e-mail from Brian Heytink, dated on or about January 8, 2016, regarding wall modifications at the premises.
3. An e-mail from Brian Heytink dated on or about February 23, 2016.
4. Daily Progress Report entries, specifically all entries between May 27, 2016 and July 28, 2016; a plan review by Chris Hanna on October 9, 2016; a plan review by Chris Hanna on October 16, 2016; event(s) attributed to Woodney Christophe; and eight (8) blank lines where “it appears entries were intentionally removed.”

Thereafter, on September 16, 2016, the Complainant filed an amended Denial of Access Complaint with the GRC. In the amended complaint, the Complainant reduced the number of records he alleged were denied to three (3) items. The Complainant failed to provide a Detail Summary (page 4 of the amended complaint). Rather, he attached a number of e-mails to the amended complaint and left it to the GRC to sort out the details.

In an e-mail dated September 7, 2016, from the Complainant to the Custodian, the Complainant stated that he did not receive an explanation for eight (8) blank lines in the Daily Progress Reports. The Complainant stated that “it appears entries were intentionally removed, and all the entries between 5/27/16 and 7/28/16 appear to have been deleted.”

By e-mail dated September 13, 2016 (4:58 p.m.), from the Custodian to the Complainant, the Custodian informed the Complainant that the memo from City Staff Engineer Christopher

⁶ The Complainant attached to the complaint copies of the OPRA requests that he alleged were submitted to the Custodian, and same are attached hereto as Exhibits A-1 through A-5.

⁷ Based upon an e-mail from the Complainant to the City dated December 22, 2015, the Complainant agreed to accept delivery of the records responsive to the request “as soon as possible.” Based upon an e-mail from the Custodian to the Complainant dated December 22, 2015, the responsive records were disclosed on December 22 and 23, 2015.

Hanna, dated November 20, 2015, is a draft document that was never finalized or submitted. The Custodian stated that, “[p]er N.J.S.A. 47: 1A-1.1, deliberative documents are exempt records under OPRA so your request for this record is denied.”⁸ The Custodian also stated that no information was removed, redacted, or deleted from the Daily Progress Reports. With respect to the balance of the Complainant’s request, the Custodian stated that all records defined in OPRA as ‘government records’ were provided to the Complainant.

By e-mail dated September 13, 2016 (7:26 p.m.), from the Complainant to the Custodian, the Complainant disputes the Custodian’s assertion that the memo from Mr. Hanna, dated November 20, 2015, is exempt as advisory, consultative, or deliberative (“ACD”) material. The Complainant states that the Appellate Division in Ciesla v. New Jersey Dep’t of Health and Senior Services, 429 N.J. Super. 127 (App. Div. 2012) found that “purely factual material that does not reflect deliberative processes in any way is not protected by the deliberative process privilege . . .” The Complainant also states that “[s]ince the 11/20/16 wall revision memo was not shared by Mr. Hanna, **there is no basis for the City of Englewood to claim that the 11/20/15 wall revision memo was used in the decision-making process and its disclosure would reveal the nature of deliberation that occurred during that process.**” (Emphasis in original.)⁹

Statement of Information:

On September 30, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she only received two (2) OPRA requests from the Complainant: one on December 11, 2015, which she responded to in writing on December 18, 2015, and one on August 18, 2016, which she responded to in writing on August 29, 2016.

With respect to the December 11, 2015 request, the Custodian certifies that the following records were determined to be responsive to the request:

1. A letter from the City Engineer to the contractor, re: SESC permit dated December 14, 2015, consisting of two (2) pages.
2. A construction permit application for plumbing sub-code #15-814 (permit jacket cover), consisting of two (2) pages.
3. Certified mail receipts, consisting of one (1) page.
4. A notice sent to property owners dated August 6, 2015, for demolition of 262 Oakwood Road, consisting of one (1) page.
5. A tax map for 262 Oakwood Road, consisting of one (1) page.
6. A receipt for Kulick dated July 23, 2015, consisting of one (1) page.
7. Plumbing permit #P15-814, consisting of one (1) page.
8. Plumbing sub-code application #15-814, consisting of one (1) page.

⁸ Specifically, N.J.S.A. 47: 1A-1.1 provides that a “[g]overnment record’ or ‘record’ means any [type of record] . . . that has been made, maintained or kept on file . . . or that has been received in the course of his or its official business . . . [t]he terms shall not include inter-agency or intra-agency advisory, consultative, or deliberative material.”

⁹ The Complainant attached other e-mails to the amended complaint; however, they address records that are not relevant to the amended complaint.

9. Receipt for Saul dated October 14, 2015, consisting of one (1) page.
10. A building permit for demolition of home #B15-814, consisting of one (1) page.
11. A building sub-code application for demolition #B15-814, consisting of one (1) page.
12. Construction permit for demolition of existing home, consisting of one (1) page.
13. A letter from PSE&G, dated October 8, 2015, consisting of one (1) page.
14. A letter from United Water, dated August 26, 2015, consisting of two (2) pages.
15. A letter and report from ABS Environmental Services, dated August 7, 2015 for an asbestos clearance certificate, consisting of ten (10) pages.
16. Plumbing permit #15-814, consisting of one (1) page.
17. Plumbing sub-code application #15-814, consisting of one (1) page.
18. Construction permit notice for plumbing #15-814, consisting of one (1) page.
19. Construction permit application for new building and COAH (permit jacket cover), consisting of two (2) pages.
20. Zoning determination form dated October 9, 2015, consisting of three (3) pages.
21. A letter from Frantz Volcy to Mayton Englewood, LLC, dated December 3, 2015, consisting of one (1) page.
22. A letter from Christopher Hanna to Mayton Englewood, LLC, dated December 3, 2015, consisting of one (1) page.
23. A memo from Christopher Hanna to Walter Deptuch with a copy of a check, dated November 3, 2015, consisting of three (3) pages.
24. A memo from Christopher Hanna to Walter Deptuch with a copy of a W-9 form dated November 3, 2015, consisting of three (3) pages.
25. Plumbing sub-code permit application for AC unit with project summary, consisting of six (6) pages.
26. Plumbing sub-code permit application with a water riser diagram, consisting of three (3) pages.
27. A fire protection sub-code application for permit #15-002351 and specs, consisting of twenty-nine (29) pages.
28. Electrical sub-code permit application, consisting of one (1) page.
29. COAH fee sheet, consisting of one (1) page.
30. E-mail from Nicola Lepore to B. Heytink, dated October 20, 2016, consisting of one (1) page.
31. Building sub-code permit application and permit, consisting of two (2) pages.
32. Report for modular block retaining wall design dated September 15, 2015, consisting of two (2) pages.
33. Drainage report dated September 15, 2016 (sic), consisting of thirteen (13) pages.
34. Soil moving report, dated September 15, 2015, consisting of three (3) pages.

35. Plans for 262 Oakwood Road, dated September 15, 2015, consisting of four (4) pages.
36. Building sub-code permit application for retaining wall, consisting of one (1) page.
37. Construction permit application for building sub-code #15-002836 (permit jacket cover), consisting of one (1) page.
38. Report from FPA for MSE retaining wall calculations, dated December 1, 2015, consisting of twenty-two (22) pages.
39. Soil moving report dated September 15, 2015, consisting of three (3) pages.
40. Drainage report dated September 15, 2016 (sic), consisting of thirteen (13) pages.

The Custodian certifies that all the records were disclosed in unredacted form, except for item numbers 2, 7, 8, 11, 12, 15, 16, 17, 19, 20, 24, 25, 26, 27, 28, 31, 36, and 37, which were redacted to remove unlisted telephone numbers and/or federal employer ID numbers. The Custodian certifies that the redactions were made to delete such personal identifying information pursuant to N.J.S.A. 47:1A-1.1. The Custodian certifies that records numbered 1 through 34 were disclosed to the Complainant on December 22, 2015, and that records numbered 35 through 40 were disclosed to the Complainant on December 23, 2015, following the Complainant's review of all of the records on December 18, 2015.

With respect to the August 18, 2016 request, the Custodian certifies that a T&M Daily Progress Report for 262 Oakwood Road, consisting of four (4) pages, was determined to be responsive to the request. The Custodian certifies that this record was disclosed in unredacted form to the Complainant on August 29, 2016.

In his legal argument, the Custodian's Counsel first addresses item number 1 of the records relevant to the amended complaint. Counsel contends that Engineer Christopher Hanna is not a Staff Engineer employed by the City but rather an employee of T&M Associates. Counsel asserts that there are limited circumstances in which a private business may be subject to the provisions of OPRA and that none of the limited circumstances are applicable to T&M Associates. Counsel further asserts that item number 1 of the records relevant to the amended complaint is a draft memo that was never received by the City; therefore, because the draft memo was never made, maintained, kept on file, or received in the course of official business, it is not a government record subject to OPRA. Counsel cites Demitroff v. Buena Vista Twp. Fire Dist. No. 1, GRC Complaint No. 2014-228 (July 2015), in support of his assertion. Counsel argues, however, that if the record was deemed to be a government record, it would be exempt from access as "advisory, consultative and deliberative" material because it is a draft document. Counsel states that in Ciesla v. NJ Dept. of Health and Senior Serv., 429 N.J. Super. 127 (App. Div. 2012), the court expressed that "[g]iven their non-final character, it makes eminent sense to treat such pre-decisional drafts as protected materials within the umbrella of the deliberative process privilege"¹⁰

¹⁰ No page number cited.

The Custodian's Counsel states that the balance of the allegations set forth in the amended complaint were properly addressed by the Custodian. Counsel states that the blank lines in the daily progress reports are just that, blank lines. Counsel states that no information was deleted or redacted. Counsel states that item no. 5 in the complaint (now item number 3 of the records relevant to the amended complaint) is without merit, vague, and unclear.

Counsel states that the January 8, 2016 e-mail and February 23, 2016 correspondence from Brian Heytink were disclosed to the Complainant. Counsel further states that the Complainant confirmed said disclosure in an e-mail to the GRC dated September 8, 2016.¹¹

Additional Submissions:

On September 21, 2016, the Complainant e-mailed the GRC to convey what he characterized as an urgent matter. The Complainant, after setting forth his reasons for seeking the memo from Christopher Hanna dated November 20, 2015, states that he received a copy of a letter on this date from the City Attorney to the Attorney for the Board of Adjustment. In the letter, the City Attorney allegedly stated that he was "advised that there may have been a draft Memo that was never finalized nor submitted to the City and does not exist at this time." (Emphasis omitted.) The Complainant states that letter from the City Attorney denotes a disregard for the need to preserve the record, and he issued a notice to the custodial agency advising them against destruction of requested records.

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.

1. Memo from City Staff Engineer Christopher Hanna dated November 20, 2015.

The courts have consistently held that draft records of a public agency fall within the deliberative process privilege. See U.S. v. Farley, 11 F.3d 1385 (7th Cir. 1993); Pies v. U.S. Internal Rev. Serv., 668 F.2d 1350 (D.C. Cir. 1981); N.Y.C. Managerial Employee Ass'n, v. Dinkins, 807 F.Supp., 955 (S.D.N.Y. 1992); Archer v. Cirrincione, 722 F. Supp. 1118 (S.D. N.Y. 1989); Coalition to Save Horsebarn Hill v. Freedom of Info. Comm., 73 Conn. App. 89, 806 A.2d 1130 (Conn. App. Ct. 2002); pet. for cert. den. 262 Conn. 932, 815 A.2d 132 (2003). As explained in Coalition, the entire draft document is deliberative because in draft form, it "reflect[s] that aspect of the agency's function that precedes formal and informed decision making." *Id.* at 95, quoting Wilson v. Freedom of Info. Comm., 181 Conn. 324, 332-33, 435 A.2d 353 (1980). The New Jersey Appellate Division also has reached this conclusion with

¹¹ These items, included in the complaint dated September 8, 2016, were removed as "records denied" in the amended complaint dated September 16, 2016.

regard to draft documents. In the unreported section of In re Readoption, *supra*, the court reviewed an OPRA request to the Department of Corrections (“DOC”) for draft regulations and draft statutory revisions. The court stated that these drafts were “all clearly pre-decisional and reflective of the deliberative process.” *Id.* at 18. It further held:

“[t]he trial judge ruled that while appellant had not overcome the presumption of non-disclosure as to the entire draft, it was nevertheless entitled to those portions which were eventually adopted. Appellant appeals from the portions withheld and DOC appeals from the portions required to be disclosed. We think it plain that all these drafts, in their entirety, are reflective of the deliberative process. On the other hand, appellant certainly has full access to all regulations and statutory revisions ultimately adopted. We see, therefore, no basis justifying a conclusion that the presumption of nondisclosure has been overcome. *Ibid.* (Emphasis added.)”

Moreover, in Parave-Fogg v. Lower Alloways Creek Twp., GRC Complaint No. 2006-51 (August 2006), the Council held that “the Custodian has not unlawfully denied access to the requested meeting minutes as the Custodian certifies that at the time of the request said minutes had not been approved by the governing body and as such, they constitute inter-agency, intra-agency advisory, consultative, or deliberative material and are exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.” The GRC held in Kohn v. Twp. of Livingston, GRC Complaint No. 2007-319 (July 2008), that draft documents are ACD material until the time that the draft documents are officially approved by the governing body. In Haemmerle v. Twp. of Washington, GRC Complaint No. 2006-106 (June 2007), the Council held that a letter drafted by the Mayor, which was neither finalized nor sent to the residents of the Township of Washington, was pre-decisional as well as deliberative and therefore exempt from public disclosure as ACD material pursuant to N.J.S.A. 47:1A-1.1.

The court similarly held that memos containing draft procedures and protocols were entirely protected from disclosure. *Id.* at 19. *See also* Edwards v. City of Jersey City, GRC Complaint No. 2002-71 (February 2004) (noting that, in general, drafts are deliberative materials).

Here, the Custodian certified that the memo from City Staff Engineer Christopher Hanna, dated November 20, 2015, is a draft document that was never finalized or submitted. The Custodian’s Counsel also asserted that the requested record is a draft memo that was never received by the City.

The Complainant did not dispute the Custodian’s assertion that the record is a draft document. Rather, he argued that because it was not shared by Mr. Hanna, there is no basis for the City of Englewood to claim that it was used in the decision-making process and its disclosure would reveal the nature of deliberation that occurred during that process. The Complainant therefore contends that the record should not be exempt from access as ACD material.

Contrary to the Complainant’s assertions, the Custodian has lawfully denied access to the requested memo from Christopher Hanna, dated November 20, 2015, because said record was in draft form at the time of the Complainant’s request and thus exempt from disclosure as ACD

material pursuant to N.J.S.A. 47:1A-1.1. See Parave-Fogg, supra, Kohn, supra, Haemmerle, supra, and Edwards v. City of Jersey City, GRC Complaint No. 2002-71 (February 2004).

2. Daily Progress Reports.

The Complainant asserts that he was denied access in part to the Daily Progress Reports because they are redacted in several areas. The Custodian certified that the responsive record consists of four (4) pages and was disclosed in unredacted form to the Complainant. The GRC examined the disclosed Daily Progress Reports, which were attached to the complaint, as well as those that were attached to the SOI. The reports attached to the complaint had what appeared to be at least one wite-out® redaction on page 1, line 3, after “Tree Permit #.” The reports attached to the SOI did not have that apparent wite-out® redaction. This inconsistency raises the possibility that the reports were, in fact, redacted to some extent.

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 Council¹² 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.

¹² Paff v. NJ Dep’t of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

Accordingly, the GRC must conduct an *in camera* review of the responsive Daily Progress Reports to validate the Custodian's assertion that the records were disclosed to the Complainant in unredacted form. See Paff, 379 N.J. Super. 346; N.J.S.A. 47:1A-1.1.

3. All other documents (descriptions currently unknown), which have not been disclosed.

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

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

Id. at 549 (emphasis added).

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

Here, in seeking “all other documents (descriptions currently unknown)” the Complainant has failed to identify specifically any records; therefore, the Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG, 375 N.J. Super. 534 at 546; Bent, 381 N.J. Super. 30 at 37; N.J. Builders Ass’n, 390 N.J. Super. 166 at 180; Schuler, GRC 2007-151. Thus, the Custodian did not unlawfully deny access to this requested item. N.J.S.A. 47:1A-6.

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 has lawfully denied access to the requested memo from Christopher Hanna, dated November 20, 2015, because said record was in draft form at the time of the Complainant's request and thus exempt from disclosure as advisory, consultative, or deliberative material pursuant to N.J.S.A. 47:1A-1.1. See Parave-Fogg v. Lower Alloways Creek Township, GRC Complaint No. 2006-51 (August 2006), Kohn v. Township of Livingston, GRC Complaint No. 2007-319 (July 2008), Haemmerle v. Township of Washington, GRC Complaint No. 2006-106 (June 2007), and Edwards v. City of Jersey City, GRC Complaint No. 2002-71 (February 2004).
2. The GRC must conduct an *in camera* review of the responsive Daily Progress Reports to validate the Custodian's assertion that the records were disclosed to the Complainant in unredacted form. 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 deliver¹³ to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see paragraph #2 above), nine (9) copies of the redacted records, a document or redaction index¹⁴, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,¹⁵ 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. In seeking "all other documents (descriptions currently unknown)" the Complainant has failed to identify specifically any records; therefore, the Complainant's OPRA request is invalid because it fails to seek identifiable government records. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005), N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).
5. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, pending the Custodian's compliance with the Council's Interim Order.

Prepared By: John E. Stewart

November 8, 2017

¹³ 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.

¹⁴ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

¹⁵ "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."