



**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**

**April 28, 2020 Government Records Council Meeting**

Steven Wronko  
Complainant

Complaint No. 2017-237

v.

Township of South Brunswick (Middlesex)  
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council (“Council”) considered the April 21, 2020 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 should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant’s Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. 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 28<sup>th</sup> Day of April 2020

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: April 30, 2020**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

*Prevailing Party Attorney's Fees*  
**Supplemental Findings and Recommendations of the Executive Director  
April 28, 2020 Council Meeting**

**Steven Wronko**<sup>1</sup>  
**Complainant**

**GRC Complaint No. 2017-237**

v.

**Township of South Brunswick**<sup>2</sup>  
**Custodial Agency**

**Records Relevant to Complaint:** Copies via facsimile transmission of “. . . all settlement agreements from January 1, 2014 through October 19, 2017.”<sup>3</sup>

**Custodian of Record:** Barbara Nyitrai

**Request Received by Custodian:** October 19, 2017

**Response Made by Custodian:** October 19, 2017

**GRC Complaint Received:** December 13, 2017

**Background**

**February 26, 2020 Council Meeting:**

At its February 26, 2020 public meeting, the Government Records Council (“Council”) considered the January 21, 2020 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, found that:

1. The current Custodian complied with the Council’s November 12, 2019 Interim Order because she responded in the extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to a portion of the Complainant’s OPRA request, she lawfully denied access to the remainder. Further, the current Custodian cured the Custodian’s unlawful denial of access by disclosing responsive records in accordance with the Council’s November 12, 2019 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

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<sup>1</sup> Represented by C.J. Griffin, Esq., of Pashman Stein Walder Hayden P.C. (Hackensack, NJ).

<sup>2</sup> Represented by Donald J. Sears, Esq. (Monmouth Junction, NJ).

<sup>3</sup> There were other records requested that are not relevant to this complaint.

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.

3. Pursuant to the Council's November 12, 2019 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Council required the Custodian to search for and disclose responsive records to the valid portion of the Complainant's request, which the current Custodian complied with on December 13, 2019. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

#### Procedural History:

On February 28, 2020, the Council distributed its February 26, 2020 Interim Order to all parties. On March 19, 2020, the Complainant's Counsel advised the GRC in writing that the parties reached an amicable settlement on the fee and therefore there was no need for a fee application.

#### Analysis

##### Prevailing Party Attorney's Fees

At its February 26, 2020 meeting, the Council determined that the Complainant was a prevailing party entitled to an award of reasonable attorney's fees. The Council thus ordered that the "parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days." The Council further ordered that the parties shall notify the GRC in writing if a fee agreement is reached. Finally, the Council ordered that, should the parties not reach an agreement, the Complainant's Counsel would be required to "submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13."

On February 28, 2020, the Council distributed its Interim Order to all parties; thus, the parties' response was due by March 27, 2020. On March 19, 2020, the Complainant's Counsel advised the GRC in writing that the parties had reached a settlement on the fee and that there was no need for a fee application.

Accordingly, the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant's Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends that the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant's Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Prepared By: John E. Stewart  
Staff Attorney

April 21, 2020



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**

**February 26, 2020 Government Records Council Meeting**

Steven Wronko  
Complainant

Complaint No. 2017-237

v.

Township of South Brunswick (Middlesex)  
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the January 21, 2020 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 current Custodian complied with the Council’s November 12, 2019 Interim Order because she responded in the extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to a portion of the Complainant’s OPRA request, she lawfully denied access to the remainder. Further, the current Custodian cured the Custodian’s unlawful denial of access by disclosing responsive records in accordance with the Council’s November 12, 2019 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.
3. Pursuant to the Council’s November 12, 2019 Interim Order, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Council required the Custodian to search for and disclose responsive records to the valid portion of the Complainant’s request, which the current Custodian complied with on December 13, 2019. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an**



**effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Interim Order Rendered by the  
Government Records Council  
On The 26<sup>th</sup> Day of February 2020

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 28, 2020**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
February 26, 2020 Council Meeting**

**Steven Wronko**<sup>1</sup>  
**Complainant**

**GRC Complaint No. 2017-237**

v.

**Township of South Brunswick**<sup>2</sup>  
**Custodial Agency**

**Records Relevant to Complaint:** Copies via facsimile transmission of “. . . all settlement agreements from January 1, 2014 through October 19, 2017.”<sup>3</sup>

**Custodian of Record:** Barbara Nyitrai

**Request Received by Custodian:** October 19, 2017

**Response Made by Custodian:** October 19, 2017

**GRC Complaint Received:** December 13, 2017

**Background**

**November 12, 2019 Council Meeting:**

At its November 12, 2019 public meeting, the Government Records Council (“Council”) considered the October 30, 2019 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, found that:

1. The Custodian has not borne her burden of proving that the Complainant’s request is invalid under OPRA for being overbroad and unclear; rather, the Complainant made a sufficiently specific request for copies of settlement agreements during a specified time period. N.J.S.A. 47:1A-6. See MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). As such, the Custodian must disclose the responsive requested records to the Complainant.
2. **The Custodian shall either comply with paragraph 2 above within five (5) business days from receipt of the Council’s Interim Order by disclosing the responsive records with any appropriate redactions, including a detailed document index**

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<sup>1</sup> Represented by C.J. Griffin, Esq., of Pashman Stein Walder Hayden P.C. (Hackensack, NJ).

<sup>2</sup> Represented by Donald J. Sears, Esq. (Monmouth Junction, NJ).

<sup>3</sup> There were other records requested that are not relevant to this complaint.

**explaining the lawful basis for each redaction, and simultaneously providing certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Council Staff; or in the event the Custodian determines that a special service charge is applicable, the Custodian shall complete the GRC's 14-point analysis and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council's Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Council Staff certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Council Staff a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with N.J. Court Rule 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**

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.
4. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On November 14, 2019, the Council distributed its November 12, 2019 Interim Order to all parties. On November 21, 2019, the Custodian responded to the Council's Interim Order by providing to the Complainant a completed 14-point analysis showing the estimated special service charge of \$1,396.01 for approximately 295 files that may contain records responsive to the request. The Custodian also disclosed to the Complainant nineteen (19) records which the Custodian determined were readily available and responsive to the Complainant's request. Further, the Custodian simultaneously submitted to the Council Staff a certification of compliance.<sup>4</sup>

On November 25, 2019, "No One" transmitted an e-mail to the Custodian which stated, "[y]ou never quoted a charge."<sup>5</sup>

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<sup>4</sup> Neither the certification of compliance nor the disclosure of any records was required at this juncture.

<sup>5</sup> "No One" is believed to be the Complainant or someone acting on his behalf. Moreover, the GRC notes that No One's allegation is not correct.

Steven Wronko v. Township of South Brunswick, 2017-237 – Supplemental Findings and Recommendations of the Executive Director



On December 4, 2019, the GRC e-mailed the Custodian and Custodian's Counsel informing them that pursuant to the terms of the Order, the Complainant should have paid the special service charge or declined to purchase the records on or before November 29, 2019. The GRC requested the present status of the matter.

On December 4, 2019, the Complainant's Counsel e-mailed the GRC stating that there may have been "some confusion regarding what was produced . . ." Counsel requested an extension of time to consult with the client.

On December 4, 2019, the GRC replied to Counsel's e-mail by providing a brief post-Order procedural history and granting the Complainant a five (5) business day extension of time to pay or decline to pay the special service charge.

On December 4, 2019 and December 5, 2019, the GRC received e-mails from the Complainant's Counsel which indicated that the Complainant would be willing to narrow his request in order to avoid the special service charge. Counsel indicated the Complainant would be willing to engage in a cooperative process in order to do so.

On December 5, 2019, the GRC e-mailed the Complainant's Counsel to offer an extension of time until January 7, 2020, to provide the Complainant with sufficient time to engage in the referenced cooperative process in an effort to reduce or avoid the special service charge.

On December 5, 2019, the Custodian e-mailed the GRC in reply to its December 4, 2019 e-mail requesting the present status of the matter. The Custodian informed the GRC that the Complainant had not paid the special service charge.

On December 19, 2019, the Complainant's Counsel e-mailed the Custodian to inform her that the Complainant was willing to narrow his request to the time period January 1, 2017 to October 1, 2017 in an effort to avoid the special service charge. On December 26, 2019, the Custodian replied to the Complainant's Counsel, stating that narrowing the time period as proposed would lower the special service charge to \$398.86.

On January 7, 2020, the Complainant's Counsel e-mailed the GRC stating that the negotiations did not result in a resolution because the Complainant cannot afford to pay a special service charge of more than \$300.00. Counsel stated that, as such, her client declines to purchase the requested records.

## **Analysis**

### **Compliance**

On November 12, 2019, the Council ordered the above-referenced compliance. On November 14, 2019, 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, initial compliance was due on or before November 21, 2019. On November 21, 2019, the Custodian disclosed to the Complainant nineteen (19) records which the Custodian determined were responsive to the Complainant's request, together with a completed 14-point analysis showing the

estimated special service charge. The Custodian simultaneously submitted a certification of compliance to the Council Staff.

Although the Complainant failed in a timely manner to either pay the special service charge or decline to purchase the records, the Complainant, through Counsel, asked the GRC for an extension of time to negotiate the special service charge. On December 5, 2019, the GRC offered the Complainant an extension of time until January 7, 2020, in order to provide the Complainant with sufficient time to enter said negotiations. On January 7, 2020, the Complainant's Counsel notified the GRC that the negotiations did not result in a resolution and that her client declined to purchase the requested records.

The Custodian failed to deliver to the Council Staff a certification in accordance with R. 1:4-4 confirming the Complainant's refusal to purchase the requested records. However, due to extenuating circumstances, i.e., the entry of the parties into negotiations, the GRC declines to fault the Custodian for such noncompliance. Moreover, the Custodian did notify the GRC via e-mail dated December 5, 2019, that the Complainant had not paid the special service charge.

Therefore, the Custodian complied with the Council's November 12, 2019 Interim Order because the Custodian in a timely manner delivered to the Complainant a completed 14-point analysis showing the estimated special service charge. The Custodian also simultaneously submitted a certification of initial compliance to the Council Staff. Further, the Custodian need not further comply with the Interim Order because the Complainant declined to pay the special service charge after the parties' negotiations ended.

### **Knowing & Willful**

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

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

Although the Custodian failed to bear her burden of proving that the Complainant's request was invalid and therefore unlawfully denied the Complainant access to the requested records, the Custodian did certify that the records would be made available to the Complainant upon payment of a special service charge in compliance with the Council's November 12, 2019 Interim Order. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **Prevailing Party Attorney's Fees**

OPRA provides that:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . . ; or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council . . . . A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

[N.J.S.A. 47:1A-6].

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Court held that a complainant is a "prevailing party" if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct. Id. at 432. Additionally, the Court held that attorney's fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

Additionally, the New Jersey Supreme Court has ruled on the issue of "prevailing party" attorney's fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the Supreme Court discussed the catalyst theory, "which posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." Mason, 196 N.J. at 71, (quoting Buckhannon Bd. & Care Home v. West Virginia Dep't of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court stated that the phrase "prevailing party" is a legal term of art that refers to a "party in whose favor a judgment is rendered." (quoting Black's Law Dictionary 1145 (7<sup>th</sup> ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because "[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties . . ." Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863. The Supreme Court also expressed concern that the catalyst theory would spawn extra litigation over attorney's fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

However, the Court noted in Mason, that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, 387 N.J. Super. at 429; see, e.g., Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). "But in

Steven Wronko v. Township of South Brunswick, 2017-237 – Supplemental Findings and Recommendations of the Executive Director

interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” 196 N.J. at 73 (citations omitted).

The Mason Court accepted the application of the catalyst theory within the context of OPRA, stating that:

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6. Under the prior RTKL, “[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney's fee not to exceed \$500.00.” N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

[Mason at 73-76 (2008).]

The Court in Mason, further held that:

[R]equestors are entitled to attorney’s fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) “a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved”; and (2) “that the relief ultimately secured by plaintiffs had a basis in law.” Singer v. State, 95 N.J. 487, 495, cert denied (1984).

[Id. at 76.]

Here, the Complainant filed the instant complaint requesting that the Council make a finding that the OPRA request was valid and the Custodian must disclose to the Complainant the records relevant to the complaint. By Interim Order dated November 12, 2019, the Council found that the Custodian did not bear her burden of proving that the Complainant’s request was invalid under OPRA for being overbroad and unclear, and directed the Custodian to disclose the requested records to the Complainant. Thus, the evidence of record supports that the Complainant is a prevailing party, who is entitled to an award of attorney’s fees.

Therefore, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters, 387 N.J. Super. 432. Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. 51. Specifically, after the complaint was filed, the Council found that the request was valid and ordered the Custodian to disclose the requested records to the Complainant. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party, who is entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall**

**promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's November 12, 2019 Interim Order because the Custodian in a timely manner delivered to the Complainant a completed 14-point analysis showing the estimated special service charge. The Custodian also simultaneously submitted a certification of initial compliance to the Council Staff. Further, the Custodian need not further comply with the Interim Order because the Complainant declined to pay the special service charge after the parties' negotiations ended.
2. Although the Custodian failed to bear her burden of proving that the Complainant's request was invalid and therefore unlawfully denied the Complainant access to the requested records, the Custodian did certify that the records would be made available to the Complainant upon payment of a special service charge in compliance with the Council's November 12, 2019 Interim Order. Moreover, the evidence of record does not indicate that the Custodian's actions had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, the Custodian's actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters, 387 N.J. Super. 432. Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. 51. Specifically, after the complaint was filed, the Council found that the request was valid and ordered the Custodian to disclose the requested records to the Complainant. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party, who is entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Prepared By: John E. Stewart  
Staff Attorney

January 21, 2020<sup>6</sup>

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<sup>6</sup> This complaint was prepared for adjudication at the Council's January 28, 2020 meeting, but could not be adjudicated due to lack of quorum.



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**

**November 12, 2019 Government Records Council Meeting**

Steven Wronko  
Complainant

Complaint No. 2017-237

v.

Township of South Brunswick (Middlesex)  
Custodian of Record

At the November 12, 2019 public meeting, the Government Records Council (“Council”) considered the October 30, 2019 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 has not borne her burden of proving that the Complainant’s request is invalid under OPRA for being overbroad and unclear; rather, the Complainant made a sufficiently specific request for copies of settlement agreements during a specified time period. N.J.S.A. 47:1A-6. See MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). As such, the Custodian must disclose the responsive requested records to the Complainant.
2. **The Custodian shall either comply with paragraph 2 above within five (5) business days from receipt of the Council’s Interim Order by disclosing the responsive records with any appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously providing certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>1</sup> to the Council Staff;<sup>2</sup> *or* in the event the Custodian determines that a special service charge is applicable, the Custodian shall complete the GRC’s 14-point analysis<sup>3</sup> and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council’s Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the**

<sup>1</sup> "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."

<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium.

<sup>3</sup> See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>.

**records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Council Staff certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Council Staff a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with N.J. Court Rule 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**

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.
4. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 12<sup>th</sup> Day of November 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: November 14, 2019**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 12, 2019 Council Meeting**

**Steven Wronko**<sup>1</sup>  
**Complainant**

**GRC Complaint No. 2017-237**

v.

**Township of South Brunswick**<sup>2</sup>  
**Custodial Agency**

**Records Relevant to Complaint:** Copies via facsimile transmission of “. . . all settlement agreements from January 1, 2014 through October 19, 2017.”<sup>3</sup>

**Custodian of Record:** Barbara Nyitrai  
**Request Received by Custodian:** October 19, 2017  
**Response Made by Custodian:** October 19, 2017  
**GRC Complaint Received:** December 13, 2017

**Background**<sup>4</sup>

Request and Response:

On October 19, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 19, 2017, the day the Custodian received the request, the Custodian responded in writing informing the Complainant that “[t]he records requested . . . are being denied as they are broad and unclear[.]” The Custodian further stated that the request failed to identify specific government records and would require her to conduct research in order to determine which records would be responsive to the request. In support of the denial the Custodian cited 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), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). The Custodian further informed the Complainant that she could be of further assistance to him if he provided clarification and identified the records being sought.

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<sup>1</sup> Represented by C.J. Griffin, Esq., of Pashman Stein Walder Hayden P.C. (Hackensack, NJ).

<sup>2</sup> Represented by Donald J. Sears, Esq. (Monmouth Junction, NJ).

<sup>3</sup> There were other records requested that are not relevant to this complaint.

<sup>4</sup> 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.



On October 19, 2017, the Complainant e-mailed the Custodian, informing her that he was clarifying his request. The Complainant stated, “[f]or settlement agreements, I want all of your settlement agreements from the dates I specified.”

#### Denial of Access Complaint:

On December 13, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”) alleging that he was denied access to the records relevant to the complaint. The Complainant, through Counsel, asserted that the requested records are government records subject to disclosure under N.J.S.A. 47:1A-1.1 because they are records “made, maintained or kept on file in the course of [South Brunswick’s] official business.” The Complainant’s Counsel stated that the request sufficiently identified the records the Complainant was seeking, and that the request did not require the Custodian to conduct research. Counsel cited Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), as being directly on point because in that case the requestor was seeking “any and all settlements, releases or similar documents” and that the exact subject matter to which the records related was not specified in the request. Counsel stated that the Burnett court held that the OPRA request was a valid request. The Complainant’s Counsel also stated that per Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), a requestor is not required to set forth the exact record he or she is seeking. Rather, the requestor need only reasonably describe the requested records.

Counsel argued that the request in the instant complaint did not require the Custodian to conduct research because she did not have to analyze, compile, and collate the information contained in the requested records. Counsel stated that, instead, the Custodian merely needed to search the files for any settlement agreement that was executed within the specified time frame and disclose same to the Complainant in response to his request. The Complainant’s Counsel asked the GRC to find that:

- The Custodian violated OPRA by unlawfully denying the Complainant’s request.
- The Complainant is a prevailing party entitled to attorney’s fees.
- The Complainant be awarded any further relief that the GRC deems proper.

#### Statement of Information:

On January 18, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 19, 2017 and responded in writing on that same date. The Custodian certified that shortly after she received the Complainant’s OPRA request, he telephoned her to inform her that he wanted the requested records immediately. The Custodian certified that she told the Complainant that because the Township does not keep its settlement agreements in one location, she would need clarification of the request so that she could search the appropriate files for the requested records. The Custodian certified that the Complainant became irate and the call ended. The Custodian certified that shortly thereafter she prepared the response to the request informing the Complainant that the request was broad and unclear.

The Custodian also certified that the Township does not “keep a list of settlement agreements or a file for settlement agreements as they are filed based on subject and/or parties.” The Custodian further certified that because storage of the requested records is decentralized, her staff would have to check “with each department on whether any settlement agreements have been reached over the past 3 years without knowing what or who it is regarding.”

The Custodian’s Counsel argued that the Custodian properly denied the Complainant’s request due to the broad nature of the request and the fact that they are not maintained in a specific file or database, but rather filed based on subject and/or named parties. Counsel stated that the Custodian would therefore be required to review, analyze, collate or compile data in order to fulfill the request.

The Custodian’s Counsel stated that the Complainant relied primarily upon Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010). Counsel stated that in the decision, the Appellate Division found that a request for “any and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present” was permitted by OPRA. Counsel stated that the court determined that the request was for “particularized identifiable government records . . . rather than information generally.” Counsel stated that the court found that Burnett’s request “did not require [the] custodian to exercise discretion, survey employees or conduct research, rather, the responsive records are self-evident.” Counsel argued that in the instant complaint, the facts demonstrate that the Custodian would be required to “exercise discretion, survey employees or conduct research’ in order to fulfill the request.

The Custodian’s Counsel stated that since the holding in Burnett, the Appellate Division determined in Shipyard Assocs., L.P. v. City of Hoboken, 2015 N.J. Super. Unpub. LEXIS 2117 (App. Div. 2015) that:

While an exact definition of an impermissibly overly broad request is abstract, courts have found requests that require a custodian to exercise his discretion, survey employees or undertake research to determine whether a record is responsive are overly broad and not encompassed by OPRA. We have concluded requests for “any and all documents and data . . . relied upon, considered, reviewed or otherwise utilized” were impermissibly overbroad. N.J. Builders Ass’n, supra, 390 N.J. Super. at 177.

[Id. at \*8.]

Counsel continued to cite the court’s decision in Shipyard, which goes on to reference MAG, 375 N.J. Super. 534, 549-50 (App. Div. 2005), and then states, “[n]otably, the agency did not already maintain a database or list of its records . . . [a]s a result, the request would have required the custodian to create a database of all records under the general topic as the requestor’s descriptor of the records sought was not otherwise used to identify records or materials within the agency.” Id. at \*9, \*10.

The Custodian’s Counsel relies on this unpublished decision to conclude that here “since the Custodian was required to ‘exercise [her] discretion, survey employees or undertake research

to determine whether a record is responsive, the [Complainant's] request was overly broad and not encompassed by OPRA.”

## Analysis

### Unlawful Denial of Access

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

The New Jersey Appellate Division has held that OPRA “*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 “[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. at 549. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>5</sup> 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).

In contrast, the court in Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) evaluated a request for “[a]ny and all *settlements, releases or similar documents* entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. (emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained and was therefore not overly broad. Id. at 515-16. Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) found a request for the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. Id. at 176. The court emphasized that “the fact that the custodian of records in this case actually performed a search and was able to locate and identify records responsive to plaintiff's request belies any assertion that the request was lacking in specificity or was overbroad.” Id. at 177.

The Custodian's Counsel, when citing to Shipyard Assocs., L.P. v. City of Hoboken, 2015 N.J. Super. Unpub. LEXIS 2117 (App. Div. 2015), failed to cite to the very next paragraph in that decision, which provides:

In contrast, courts have determined requests for "particularized identifiable government records . . . rather than information generally" are permissible. Burke,

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<sup>5</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

*supra*, 429 N.J. Super. at 176-77. We have determined requests that identified a specific subject matter with sufficient identifying information were not overly broad even where a custodian was required to search and locate records according to a specific topic area. For example, a request for "any and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present" was permitted by OPRA. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508-09, 2 A.3d 1110 (App. Div. 2010). "The fact that the plaintiff did not specify matters to which the settlements related 'did not render his request a general request for information obtained through research, rather than a request for a specific record.'" Burke, supra, 429 N.J. Super. at 176-77 (citing Burnett, supra, 415 N.J. Super. at 508-09).

[Id. at \*10.]

Another unpublished Appellate Division decision which the GRC finds more persuasive than Shipyard Assocs., 2015 N.J. Super. Unpub. LEXIS 2117, given the facts of the instant complaint, is Wronko v. Twp. of Jackson, 2017 N.J. Super. Unpub. LEXIS 3058 (App. Div. 2017). In that matter, the Appellate Division found for the plaintiff and reversed and remanded the trial court's determination that the request was invalid. The plaintiff requested, among other items, "[c]opies of all litigation settlement agreements from January 1, 2010 through December 19, 2015 for [Jackson] Township." The court found that the request contained sufficient identifying information in accordance with Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) and Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012).

Here, similar to the fact pattern in Burnett, 415 N.J. Super. 506, the Complainant requested settlement agreements for a specific time period. As such, the complaint sought a specific type of document. And although the request did not specify a particular matter to which such document related, the request was not overly broad.

Therefore, the Custodian has not borne her burden of proving that the Complainant's request is invalid under OPRA for being overbroad and unclear; rather, the Complainant made a sufficiently specific request for copies of settlement agreements during a specified time period. N.J.S.A. 47:1A-6. See MAG, 375 N.J. Super. at 546-49; Burnett, 415 N.J. Super. at 515-16; Burke, 429 N.J. Super. at 176-77. As such, the Custodian must disclose the responsive requested records to the Complainant.

Here, however, the Custodian certified that because storage of the requested records is decentralized, her office staff would have to check with each department to determine whether any settlement agreements have been maintained by that department between January 1, 2014 and October 19, 2017, then compile those records in order to satisfy the Complainant's request. OPRA provides for such eventuality by providing that:

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 ... 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). (Emphasis added.)

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 Regional High School, 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.

In the instant complaint, because the Custodian has certified that the requested records are not maintained in a specific file or database, and therefore she will be required to have her office staff check with all of the departments to determine whether there are any records responsive to the Complainant’s request, a special service charge may be applicable.

### **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.

## Prevailing Party Attorney's Fees

The Council defers analysis of whether the Complainant is a prevailing party 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 not borne her burden of proving that the Complainant's request is invalid under OPRA for being overbroad and unclear; rather, the Complainant made a sufficiently specific request for copies of settlement agreements during a specified time period. N.J.S.A. 47:1A-6. See MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). As such, the Custodian must disclose the responsive requested records to the Complainant.
2. **The Custodian shall either comply with paragraph 2 above within five (5) business days from receipt of the Council's Interim Order by disclosing the responsive records with any appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously providing certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,<sup>6</sup> to the Council Staff;<sup>7</sup> *or* in the event the Custodian determines that a special service charge is applicable, the Custodian shall complete the GRC's 14-point analysis<sup>8</sup> and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council's Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Council Staff certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Council Staff a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the**

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<sup>6</sup> "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."

<sup>7</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium.

<sup>8</sup> See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf> .

**form of a certification in accordance with N.J. Court Rule 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**

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.
4. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: John E. Stewart  
Staff Attorney

October 30, 2019