



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

May 19, 2020 Government Records Council Meeting

Wenke Taule
Complainant

Complaint No. 2018-9

v.

Borough of Ringwood (Passaic)
Custodian of Record

At the May 19, 2020 public meeting, the Government Records Council (“Council”) considered the May 12, 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 Custodian complied with the Council’s April 28, 2020 Interim Order because she responded to the Executive Director in the prescribed time frame, certifying that the Complainant failed to respond to Borough’s correspondence providing the recalculated special service charge. Additionally, because the Council previously determined that a special service charge was warranted and reasonable, it need not address whether a knowing and willful violation of OPRA occurred.

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 19th Day of May 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: May 20, 2020



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
May 19, 2020 Council Meeting**

**Wenke Taule¹
Complainant**

GRC Complaint No. 2018-9

v.

**Borough of Ringwood (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:³

1. All e-mails between Scott M. Heck (“Borough Manager”), Walter Mugdan, Joe Gowers, and Pat Seppi between 2008-2017
2. E-mails between [the Borough Manager] and Ms. Kelley Curran – the Borough of Ringwood’s (“Borough”) liaison to the Highlands Council between 2008-2017

Custodian of Record: Nicole Langenmayr⁴

Request Received by Custodian: December 20, 2017

Response Made by Custodian: December 28, 2017

GRC Complaint Received: January 19, 2018

Background

April 28, 2020 Council Meeting:

At its April 28, 2020 public meeting, the 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, found that:

1. The Custodian complied with the Council’s February 26, 2020 Interim Order because she responded in the extended time frame providing a completed special service charge estimate and simultaneously provided certified confirmation of compliance to the Executive Director.

¹ No legal representation listed on record.

² Represented by Justin D. Santagata, Esq. of Kaufman, Semeraro & Leibman, LLP (Fort Lee, N.J.). Previously represented by Richard J. Clemack, Esq., of Richard J. Clemack, Counsellor at Law (Bloomingdale, N.J.).

³ The Complainant sought other records that are not at issue in this matter.

⁴ The original Custodian of Record was Kelley Halewicz.

2. The Custodian has borne her burden of proof that a special service charge is warranted here. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Rivera v. Rutgers, The State Univ. of New Jersey, GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). Specifically, the evidence supports that the estimated 365.62-hour time is reasonable to retrieve, assemble, review, redact, and copy 8,885 pages of e-mails potentially responsive to the Complainant's request. Additionally, the Custodian's utilization of labor counsel to assist in reviewing the e-mails at a reduced hourly rate is reasonable. See Fisher v. Div. of Law, 400 N.J. Super. 61, 72-74 (App. Div. 2008). However, the evidence does not support that the 150-hour charge to produce and return the requested items was correctly calculated based on the Custodian's hourly rate. Courier Post v. Lenape Reg'l Sch. High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002); Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015); and Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (December 2007). Thus, the Custodian must recalculate the cost of producing and returning the requested items based on the Borough Manager's hourly rate of \$27.44.
3. **The Custodian shall comply with conclusion No. 2 above by making the amended special service charge 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). Should the Complainant remit payment, the Custodian shall provide access to the responsive records and simultaneously deliver⁵ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director⁷ within ten (10) business days following receipt of said payment. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification as described above.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

⁵ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁶ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁷ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Procedural History:

On April 29, 2020, the Council distributed its Interim Order to all parties. On May 1, 2020, the Custodian's Counsel e-mailed the Complainant with the recalculated special service charge in accordance with the Council's Interim Order. Counsel also copied the GRC in the e-mail.

On May 8, 2020, Counsel responded to the Council's Interim Order, asserting that the Borough transmitted the recalculated special service charge to the Complainant on May 1, 2020 via e-mail, regular mail, and certified mail. Counsel asserted that as of May 8, 2020, the Complainant has not responded to the May 1, 2020 correspondence. Counsel asserted that pursuant to the Interim Order, the Complainant's failure to respond was a refusal to pay the recalculated special service charge, and therefore the Borough had no further obligations regarding the request at issue. Counsel also included a certified confirmation of compliance from Mr. Heck on behalf of the Custodian.

Analysis

Compliance

At its April 28, 2020 meeting, the Council ordered the Custodian to provide the Complainant with the recalculated special service charge. The Council also ordered the Custodian to provide a certification, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director should the Complainant decline to pay the recalculated charge. On April 29, 2020, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business May 6, 2020.

On May 1, 2020, the second (2nd) business day after receipt of the Council's Order, Counsel provided the Complainant with the recalculated special service charge. On May 8, 2020, the fifth (5th) business day after providing the recalculated special service charge, the Custodian provided a certification stating that the Complainant failed to respond to the May 1, 2020 correspondence, which therefore constituted a refusal to pay the recalculated special service charge.

Therefore, the Custodian complied with the Council's April 28, 2020 Interim Order because she responded to the Executive Director in the prescribed time frame, certifying that the Complainant failed to respond to Borough's correspondence providing the recalculated special service charge. Additionally, because the Council previously determined that a special service charge was warranted and reasonable, it need not address whether a knowing and willful violation of OPRA occurred.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian complied with the Council's April 28, 2020 Interim Order because she responded to the Executive Director in the prescribed time frame, certifying that the Complainant failed to respond to Borough's correspondence providing the recalculated special service charge. Additionally,

because the Council previously determined that a special service charge was warranted and reasonable, it need not address whether a knowing and willful violation of OPRA occurred.

Prepared By: Samuel A. Rosado
Staff Attorney

May 12, 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
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INTERIM ORDER

April 28, 2020 Government Records Council Meeting

Wenke Taule
Complainant

Complaint No. 2018-9

v.

Borough of Ringwood (Passaic)
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 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 February 26, 2020 Interim Order because she responded in the extended time frame providing a completed special service charge estimate and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian has borne her burden of proof that a special service charge is warranted here. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Rivera v. Rutgers, The State Univ. of New Jersey, GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). Specifically, the evidence supports that the estimated 365.62-hour time is reasonable to retrieve, assemble, review, redact, and copy 8,885 pages of e-mails potentially responsive to the Complainant’s request. Additionally, the Custodian’s utilization of labor counsel to assist in reviewing the e-mails at a reduced hourly rate is reasonable. See Fisher v. Div. of Law, 400 N.J. Super. 61, 72-74 (App. Div. 2008). However, the evidence does not support that the 150-hour charge to produce and return the requested items was correctly calculated based on the Custodian’s hourly rate. Courier Post v. Lenape Reg’l Sch. High Sch. Dist., 360 N.J. Super. 191, 199 (October 28, 2002); Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015); and Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (December 2007). Thus, the Custodian must recalculate the cost of producing and returning the requested items based on the Borough Manager’s hourly rate of \$27.44.
3. **The Custodian shall comply with conclusion No. 2 above by making the amended special service charge 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). Should the Complainant remit payment, the Custodian shall provide access to the responsive records and simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director³ within ten (10) business days following receipt of said payment. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification as described above.

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

Interim Order Rendered by the
Government Records Council
On The 28th 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 29, 2020

¹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

² "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
April 28, 2020 Council Meeting**

**Wenke Taule¹
Complainant**

GRC Complaint No. 2018-9

v.

**Borough of Ringwood (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:³

1. All e-mails between Scott M. Heck (“Borough Manager”), Walter Mugdan, Joe Gowers, and Pat Seppi between 2008-2017
2. E-mails between [the Borough Manager] and Ms. Kelley Curran – the Borough of Ringwood’s (“Borough”) liaison to the Highlands Council between 2008-2017

Custodian of Record: Nicole Langenmayr⁴

Request Received by Custodian: December 20, 2017

Response Made by Custodian: December 28, 2017

GRC Complaint Received: January 19, 2018

Background

February 26, 2020 Council Meeting:

At its February 26, 2020 public meeting, the Council considered the January 21, 2020 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 Council shall grant the current Custodian a final opportunity to provide a full and complete response to the 14-point analysis.⁵ The response shall include an estimated total cost of the special service charge, inclusive of the estimated time to review and

¹ No legal representation listed on record.

² Represented by Justin D. Santagata, Esq. of Kaufman, Semeraro & Leibman, LLP (Fort Lee, NJ). Previously represented by Richard J. Clemack, Esq., of Richard J. Clemack, Counsellor at Law (Bloomingdale, NJ).

³ The Complainant sought other records that are not at issue in this matter.

⁴ The original Custodian of Record was Kelley Halewicz.

⁵ See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf> .

redact the responsive e-mails. The response shall also clarify as to whether the estimated charge is inclusive of the time spent locating the responsive e-mails.

2. **The current Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order. Further, the current Custodian shall simultaneously deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On February 28, 2020, the Council distributed its Interim Order to all parties. On March 2, 2020, the Custodian's former counsel requested an extension of ten (10) days to respond. That same day, the GRC granted a five (5) business day extension of time to March 13, 2020.

On March 11, 2020, former counsel requested an additional extension of time to March 20, 2020 to respond to the Council's Interim Order. Former Counsel stated that an additional request was needed due to other appointments and that the Custodian's role as the Borough of Ringwood's ("Borough") municipal clerk had become part-time position. That same day, the GRC granted the extension request to March 20, 2020 after consultation with the Executive Director.

On March 17, 2020, former Counsel requested another extension of time to March 27, 2020. Former Counsel stated that the Borough's staff were devoting their time to addressing the public health crisis affecting the Borough and New Jersey. On March 18, 2020, the Custodian's Counsel e-mailed the GRC, stating that the Borough requested his firm prepare and file its response to the Council's Interim Order. Counsel also requested an extension of time to March 27, 2020 to respond. That same day, the GRC granted the extension request to the end of business on March 27, 2020.

On March 27, 2020, Counsel responded to the Council's Interim Order. Counsel asserted that the Borough's total estimated charge was \$13,129.90 for the compilation, exemption review, redaction, and creation of a Vaughn⁹ index for over 8,000 e-mails sought by the Complainant.

⁶ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁷ "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."

⁸ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

⁹ The term *Vaughn* index is derived from Vaughn v. Rosen, 484 F.2d 820, 826-28, 157 U.S. App. D.C. 340 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977, 94 S. Ct. 1564, 39 L. Ed. 2d 873 (1974). See Paff v. Div. of Law, 412 N.J. Super. 140, 161 n. 9, 988 A.2d 1239 (App. Div. 2010), *certif. denied*, 202 N.J. 45, 994 A.2d 1040 (2010). A *Vaughn* index provides details justifying non-disclosure of documents based on an asserted privileged. *Ibid*.

Counsel asserted that the Borough was charging based on its lowest available hourly rate. Counsel also argued that the Borough was using its labor counsel at a rate of \$40 per hour, when the normal rate was \$165 per hour.

Counsel argued that in Burnett v. Cnty. of Bergen, 198 N.J. 408, 438 (2009), the New Jersey Supreme Court upheld a charge of \$460,000 to redact and provide 8 million pages of documents. Counsel asserted that the work here would be even more labor intensive than in Burnett, as the responsive e-mails needed to be reviewed on a page-by-page basis to identify deliberative and other exempt material. Counsel also argued that in Fisher v. Div. of Law, 400 N.J. Super. 61 (App. Div. 2008), the Appellate Division upheld a special service charge of \$1,877.93 for 52.5 hours of work to review eleven (11) documents. Counsel asserted that the \$35 per hour rate in Fisher was roughly equivalent to the aggregate/blended proposed rate by the Borough at \$35.91.

Counsel asserted that the bulk of the hands-on work would be done by the Confidential Assistant, with the Custodian overseeing the compilation. Counsel also noted that a significant amount of work would be done by labor counsel, but at \$12 per hour less than the Custodian's rate. Counsel asserted that if the same work was done completely by the Custodian at approximately \$85, then the total cost of labor would be passed to the Complainant in the amount of \$4,335. Counsel contended that instead the total amount passed onto the Complainant would be \$3,400, with the Borough paying over \$14,000 at the labor counsel's regular rate. Counsel contended that the proposed charge should be accepted because the Complainant should bear the cost of the time and effort to process the expansive nature and volume of her request.

Counsel also included a certification from Scott M. Heck, the Borough Manager. Mr. Heck certified that while he was not the Custodian of Record, he was responsible for the request because of his direct knowledge of the underlying records at issue. Mr. Heck certified that for the sake of cohesiveness and clarity, he was resubmitting the 14-point analysis provided with the SOI, as well as the October 30, 2019 revision, inputting his own additions and clarifications based upon the Council's Interim Order:

1. What records are requested?

Response: All e-mails between Mr. Heck, Walter Mugdan, Joe Gowers, and Pat Seppi between 2008-2017.

E-mails between Mr. Heck and Ms. Kelley Curran – the Borough's liaison to the Highlands Council between 2008-2017.

2. Give a general nature description and number of the government records requested.

Response: The records being sought are e-mails between the Mr. Heck, Walter Mugdan, Joe Gowers and Pat Seppi from 2008-2017 (ten (10) years). There are 785 e-mails, 8,858 pages, and 192 maps.

3. What is the period of time over which the records extend?

Response: The request extends from 2008-2017 (ten (10) years).

4. Are some or all of the records sought archived or in storage?

Response: The e-mails sought are on the Borough Manager's computer. Mr. Heck clarified that the e-mails were stored locally but were electronically archived through Outlook's archiving function and were generally searchable.

5. What is the size of the agency (total number of employees)?

Response: 95

6. What is the number of employees available to accommodate the records request?

Response: 3: Mr. Heck, the Custodian, and the Confidential Assistant. However, Mr. Heck certified that due to the COVID-19 crisis, the Custodian was currently on medical leave and was working from home as much as possible. The Borough's labor counsel offered to review the underlying records, and the cost of which would not be passed onto the requestor at the regular rate.

7. To what extent do the requested records have to be redacted?

Response: After review, there will likely be e-mails that would meet the criteria for redaction as per OPRA law. Therefore, all the e-mails would have to be printed and assembled and then read by Mr. Heck and the Custodian. Mr. Heck and the Custodian will have to make determinations for redactions based upon the OPRA law, which because of the technical nature of the documents, the services of professional consultants may be necessary. A Vaughn index will be prepared and unredacted documents will then have to be printed to a PDF for electronic transmission.

Mr. Heck certified that because the records pertained to negotiations and deliberations between parties regarding an environmental site, many of the e-mails would likely contain information protected under the deliberative process privilege. In re Liquidation of Integrity Ins. Co., 165 N.J. 75 (2000). Mr. Heck also certified that the e-mails would have to be reviewed for attorney-client communications between the Borough and its environmental counsel.

8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve, and assemble the records for copying?

Response: The Confidential Assistant located the e-mails requested. Her hourly rate is \$30.93 and she spent 15.62 hours locating the e-mails requested. This does not include the time it would take for her to print and assemble the e-mails for review and then collate completed documents.

Mr. Heck certified that the requested e-mails have already been located but added that printing and assembling the e-mails for review would require an estimated 70 hours of work. Mr. Heck also certified that most of the requested records were e-mail chains containing duplicate information and would thus placing them in a coherent order would be a time-consuming task.

9. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?

Response: Mr. Heck's hourly rate is \$27.44/hour. The Custodian's hourly rate is \$54.33/hour. Cannot be estimated due to the volume of e-mails without actual review of all 785 e-mails, consisting of 8,885 pages.

Mr. Heck certified that those e-mails requiring more intensive review would be segregated to save on the estimated charge. Mr. Heck certified that for example, e-mails would be filtered for the names of attorneys and professionals and handed over to labor counsel for review. Mr. Heck certified that labor counsel would provide the names of certain topics and subjects more likely to contain deliberative material, which would allow the Custodian to have a more focused review. Mr. Heck also certified that the initial estimate of 200 hours noted in Item No. 14 was inclusive of all review, but that a proper Vaughn index would require an additional 20 hours if the volume of material was as expected.

10. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to return records to their original storage place?

Response: N/A.

11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?

Response: The agency intends to employ the Confidential Assistant to locate, retrieve and assemble records for copying, to print copies of documents for use by the Custodian to print redacted copies after review for exemption for privilege, and to prepare, print, and transmit the documents, either redacted or non-redacted to PDF and then electronically to the requestor. The total number of hours cannot be estimated at this time although 15.62 hours was expended by the said person just locating and retrieving the documents from the manager's computer.

Mr. Heck certified that the Confidential Assistant would print and assemble the records for review. Mr. Heck certified that the Custodian would conduct the review along with himself and labor counsel.

12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?

Response: All the persons or titles mentioned in the above paragraphs: the current Custodian, Confidential Assistant, Mr. Heck, and legal, technical and scientific consultants. The current Custodian's hourly rate is \$51.69 per hour, the Confidential Assistant's rate is \$32.83 per hour and Mr. Heck's hourly rate is \$27.44 per hour.

Mr. Heck certified that the Borough's labor counsel has an hourly rate of \$165 per hour, but the Complainant would be charged at a similar hourly rate as accepted for a deputy attorney general in Fisher, 400 N.J. Super. at 74. Mr. Heck asserted that in Fisher, the agency utilized the services of a lower-level attorney at the equivalent hourly rate of \$31.25 per hour. Mr. Heck certified that the Borough intended to charge \$40 per hour for the labor counsel's services, which was less than the Custodian's hourly rate but accounted for the fact that the Custodian would do the bulk of the initial compilation. Mr. Heck certified that if labor counsel were to do the entire review, such an hourly rate would not be reasonable.

13. What is the availability of information technology and copying capabilities?

Response: Search engines were used to identify e-mails on Mr. Heck's computer contained within the e-mail system to be able to search folder by folder.

Network printers and copiers used by all employees throughout the Borough would be used to print and assemble the documents for review. After review and redactions are complete, documents would need to be scanned and then sent to the requestor.

14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce, and return the requested documents.

Response: In a preliminary manner:

Identify e-mails: 8,885 pages – 15.62 hours actually incurred at the Confidential Assistant rate of \$32.83 per hour = \$512.80.

Identify, copy, or prepare for inspection: 85 hours, accounting for disruptions in printing (70 hours if uninterrupted as set forth in the previous analyses). 85 hours at the Confidential Assistant's rate is \$2,790.55.

Produce and return requested items: 200 hours broken down as follows: 150 hours at the Clerk's rate of \$51.69 is \$7,753.50. 50 hours for labor counsel at the \$40 rate is \$2,000, for a total of \$9,753.50.

Redactions entered into Vaughn index: 20 hours for the Vaughn index at labor counsel's rate is \$800. Redactions tend to be time-consuming and are estimated at an additional 5 hours at the same rate, equaling \$200. Review for exemption and privileges is an additional 10 hours at the Borough's labor counsel's \$40 rate, equaling \$400, and 10 hours for the Custodian to filter exemption issues per the procedure above, equaling \$516.90 The total under this answer is 45 hours at an amount of \$1,916.50.

Final printing and electronic submission: Releasable records shall be provided to the requestor on a USB drive or via a link. The total cost of copying the releasable records into this form, inclusive of scanning, is 20 hours by the confidential assistant at \$32.82 per hour, equaling \$656.60.

Review for exemptions or privileges: The total special service charge from the above calculations is \$13,129.90.

Mr. Heck certified that the Borough only has three (3) employees who can work on processing and releasing the requested records. Mr. Heck argued that although the Borough's labor counsel offered assistance, such assistance must be limited. Mr. Heck contended that substantially utilizing labor counsel for the work at the reduced rate of \$40 per hour would impose a substantial cost on the Borough, since the Borough would still be paying the normal rate for his services. Mr. Heck asserted that the Borough would pay labor counsel \$14,025 for 85 hours of work, but only \$3,400 would be passed onto the Complainant.

Mr. Heck asserted that the use of the Borough's labor counsel would be a reduction in cost to the Complainant since the Custodian's hourly rate was over \$10 higher. Mr. Heck also contended that while his hourly rate as Borough Manager was \$27.44 per hour, he held several different titles, including Director of Public Works. Mr. Heck contended that any significant expenditure of time taken by him to work on the request would cost the Borough far more than his hourly rate as it would take away from his other duties.

Analysis

Compliance

At its February 26, 2020 meeting, the Council ordered the Custodian to submit a full and complete special service charge estimate and to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On February 28, 2020, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on March 6, 2020.

On March 2, 2020, the first (1st) business day after receipt of the Council's Order, the Custodian's former Counsel requested a ten (10) day extension of time. The GRC granted an initial extension of five (5) business days to the end of business on March 13, 2020. Former Counsel then requested additional extensions on March 11, 2020, and March 17, 2020. Counsel also requested an extension on March 18, 2020. The GRC granted the latest extension of time to the end of business on March 27, 2020. On March 27, 2020, Counsel responded in writing, providing a completed special service charge estimate in accordance with the terms of the Council's Interim Order. Counsel also provided a certified confirmation of compliance to the Executive Director.

Therefore, the Custodian complied with the Council's February 26, 2020 Interim Order because she responded in the extended time frame providing a completed special service charge

estimate and simultaneously provided certified confirmation of compliance to the Executive Director.

Special Service Charge

Whenever a records custodian asserts that fulfilling an OPRA records request requires an “extraordinary” expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides 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 is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an *extraordinary expenditure of time and effort to accommodate the request*, the public agency may charge, in addition to the actual cost of duplicating the record, a *special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies . . .*

[Id. (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 a variety of factors. These factors were discussed in Courier Post v. Lenape Reg’l Sch. High Sch. Dist., 360 N.J. Super. 191, 199 (October 28, 2002). There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the “extraordinary burden” placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

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

Further, OPRA provides that if a custodian “. . . asserts that part of a particular record is exempt from public access . . . the custodian shall delete or excise from a copy of the record that portion which the custodian asserts is exempt from access and shall promptly permit access to the remainder of the record.” N.J.S.A. 47:1A-5(g). However, OPRA does not prohibit a public agency’s use of an attorney to advise, supervise or even to perform such redactions. The Courier Post court agreed with the rationale that OPRA provided:

[F]or the “custodian” to redact, excise or delete the exempt information. The Legislature could have enacted an attorney review clause, but it did not. Neither did it create a special subclass for attorney bills and accord to them any kind of special treatment. It appears rather conclusively that the custodian is responsible for asserting the privilege and making the redaction.

[Id. at 203-204 (emphasis added).]

The court ultimately held that “[a]ttorneys’ fees will not be allowed to be charged to the Post or to any other requestor of documents for review and redaction of exempt material.” Id. at 207. The court’s holding in Courier Post, 360 N.J. Super. 191 is clear: “[a]ttorneys’ fees will not be allowed to be charged . . . to any other requestor of documents for review and redaction of exempt material.” Id. at 207. To this end, the Council has previously decided that an agency could not pass the cost of a contracted attorney’s time onto the requestor. See Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-71 (Interim Order dated June 26, 2012).

However, in Fisher, 400 N.J. 61, the court discussed the factors in affirming the Council’s decision in that the custodian could charge the hourly rate for deputy attorney generals (“DAG”) to locate and review potentially responsive e-mails. First, the records sought were maintained by DAGs. Id. at 72-73. The court noted that Fisher could be distinguished from Courier Post in that “[t]his is not a case where the government records have already been retrieved and a public agency seeks to impose a ‘special service charge’ solely for the purpose of outside counsel determining whether the records contain privileged material that should be redacted.” Id. at 72. Second, the hourly rate for those DAGs was “substantially less than the . . . annual salary” of the custodian. Id. at 74. Thus, the court held that it was reasonable for the Division of Law to assign responsibility of retrieval and review to DAGs rather than the custodian. Id.

Additionally, in Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015), the Council was tasked with determining whether a proposed special service charge was warranted and reasonable. The custodian provided to the GRC a response to its 14-point analysis request that included specific details such as the hours spent by employee, the task performed during those hours, and the hourly rate. The Council reviewed the response and found that the charge was warranted. However, the Council also found that the charge was not reasonable. Specifically, the Council found that the Borough Administrator was not the lowest paid employee qualified to perform some of the work the custodian credited him with in the 14-point analysis response. Thus, the Council adjusted the fee less the amount identified as unreasonable.

In the matter before the Council, Mr. Heck provided a revised 14-point analysis based upon those provided by the original and current Custodian. Mr. Heck argued that the proposed charge of \$13,129.90 represented an estimated 365.62 hours to print, copy, review, redact (where applicable), and scan 785 e-mails comprising 8,885 pages. Mr. Heck certified that three (3) of the ninety-five (95) employees had the expertise necessary to comply with the request: himself as Borough Manager at \$27.44 per hour, the Confidential Assistant at \$32.83 per hour, and the Custodian at \$51.69 per hour. However, because of the public health crisis facing the Borough and the State, Mr. Heck asserted that the Custodian was limited in her capability to process the request. Furthermore, Mr. Heck argued that because he had several other duties in addition to his role as Borough Manager, he could not expend any significant time to reviewing the request. Thus, Mr. Heck asserted that the Borough's labor counsel would contribute eighty-five (85) out of the 245 hours estimated specifically for review and redaction and charge the Complainant \$40 per hour versus the normal rate of \$165 per hour.

A review of the foregoing supports that the estimated expenditure of 365.62 hours represents an extraordinary amount of time and effort to process the OPRA request given the number of potentially responsive records and the size of the agency. See Rivera v. Rutgers, The State Univ. of New Jersey, GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). The GRC is further persuaded by the fact that the Custodian's participation in responding to the request may be limited by the part-time nature of her job and the current events facing the Borough. Based on the foregoing, the GRC is persuaded that, in principle, a special service charge is warranted. Additional factors in reaching this determination include the number of hours needed to review and redact e-mails containing attorney-client privilege information as well as advisory, consultative, and/or deliberative material, where applicable.

However, the GRC must now address the Borough's utilization of labor counsel to perform a portion of the work. Although the instant circumstances depart from Fisher in that the Borough's labor counsel was not among the authors of the requested e-mails, of note is that the hourly rate charged to the Complainant is lower than the Custodian's. Id. at 72-74. Additionally, unlike in Courier Post, where the agency delegated all its duties of retrieval and review to outside counsel, the Custodian remains responsible for 65% of the estimated time to review the e-mails. 360 N.J. Super. at 204. Moreover, Mr. Heck and Counsel provided a detailed description of labor counsel's role and scope of his duties, further demonstrating that the Borough is not imposing a special service charge for the sole purpose of recuperating outside counsel fees. See Fisher, 400 N.J. Super. at 72. Thus, the GRC finds that the Borough's use of labor counsel to assist the Custodian in reviewing the requested e-mails is reasonable.

The GRC next addresses whether the proposed fee of \$13,129.90 is reasonable. In Courier Post, 360 N.J. Super. at 204, the court held that it would be appropriate to calculate the hourly wage rates of the clerical and professional staff involved in satisfying a request and multiplying those figures by the total hours spent, if the custodian can prove that the professional level of human resource was needed to fulfill the request. Thus, as part of the calculation of a special service charge, a custodian must prove that same was based upon the lowest paid, qualified employee's hourly rate to perform the work required to respond to the subject OPRA request. Palkowitz, GRC 2014-302. See also Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (December 2007).

In the instant matter, Mr. Heck broke down the charge into several components:

Copy, prepare for Inspection	85 hours (\$32.83 per hour) by the Confidential Assistant accounting for disruptions. 70 hours if uninterrupted. Total: \$2,790.55
Produce and return requested items	150 hours (\$51.69 per hour) by the Custodian and 50 hours (\$40 per hour) by labor counsel to review 8,885 pages of e-mails. Total: \$9,753.50
Redactions and Vaughn index and review for exemptions and privileges	20 hours (\$40 per hour) by labor counsel for the Vaughn index. 5 hours (\$40 per hour) by labor counsel for redactions. 10 hours (\$40 per hour) by labor counsel to review for exemptions and privileges. 10 hours (\$51.69 per hour) by the Custodian to filter for exemptions issues. Total: \$1,916.50
Final printing and electronic submission	20 hours (\$32.83 per hour) by the Confidential Assistant to copy releasable records, inclusive of scanning. Total: \$656.60

Upon review, the GRC is not satisfied that the cost is accurate, given that Mr. Heck identified himself as an employee capable of fulfilling the OPRA request, along with the Confidential Assistant and the Custodian. Although Mr. Heck contended that he could not expend significant time on processing the request, he still included himself as an employee conducting the overall review of the e-mails alongside the Custodian and labor counsel. Moreover, Mr. Heck's hourly rate is the lesser of the three (3) Borough employees, as well as labor counsel's reduced rate. For these reasons, the GRC does not agree that the Borough appropriately calculated the special service charge.

While the GRC agrees that a special service charge is warranted, the charge based on that time must reflect the lowest paid hourly rate capable of performing the work. See Palkowitz, GRC 2014-302. As part of the compliance, Mr. Heck certified that the tasks he was capable of performing were producing and returning the requested items. However, Mr. Heck applied the Custodian's hourly rate to that portion of the overall calculation. However, his own hourly rate was significantly less than the Custodian's hourly rate. For this reason, the applicable charge of 150 hours to produce and return the requested records should be reduced to reflect Mr. Heck's rate of \$27.44 per hour.

Accordingly, the Custodian has borne her burden of proof that a special service charge is warranted here. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Rivera, GRC 2009-285. Specifically, the evidence supports that the estimated 365.62-hour time is reasonable to retrieve, assemble, review, redact, and copy 8,885 pages of e-mails potentially responsive to the Complainant's request.

Additionally, the Custodian's utilization of labor counsel to assist in reviewing the e-mails at a reduced hourly rate is reasonable. See Fisher, 400 N.J. Super. at 72-74. However, the evidence does not support that the 150-hour charge to produce and return the requested items was correctly calculated based on the Custodian's hourly rate. See Courier Post, 360 N.J. Super. at 204; Palkowitz, GRC 2014-302; and Janney, GRC 2006-205. Thus, the Custodian must recalculate the cost of producing and returning the requested items based on the Borough Manager's hourly rate of \$27.44.

Knowing & Willful

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's February 26, 2020 Interim Order because she responded in the extended time frame providing a completed special service charge estimate and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian has borne her burden of proof that a special service charge is warranted here. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Rivera v. Rutgers, The State Univ. of New Jersey, GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). Specifically, the evidence supports that the estimated 365.62-hour time is reasonable to retrieve, assemble, review, redact, and copy 8,885 pages of e-mails potentially responsive to the Complainant's request. Additionally, the Custodian's utilization of labor counsel to assist in reviewing the e-mails at a reduced hourly rate is reasonable. See Fisher v. Div. of Law, 400 N.J. Super. 61, 72-74 (App. Div. 2008). However, the evidence does not support that the 150-hour charge to produce and return the requested items was correctly calculated based on the Custodian's hourly rate. Courier Post v. Lenape Reg'l Sch. High Sch. Dist., 360 N.J. Super. 191, 199 (October 28, 2002); Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015); and Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (December 2007). Thus, the Custodian must recalculate the cost of producing and returning the requested items based on the Borough Manager's hourly rate of \$27.44.
3. **The Custodian shall comply with conclusion No. 2 above by making the amended special service charge 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). Should the Complainant remit payment, the Custodian shall provide access to the responsive records and simultaneously deliver¹⁰ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,¹¹ to the Executive Director¹² within ten (10) business days following receipt of said payment. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification as described above.

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

Prepared By: Samuel A. Rosado
Staff Attorney

April 21, 2020

¹⁰ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

¹¹ "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."

¹² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

February 26, 2020 Government Records Council Meeting

Wenke Taule
Complainant

Complaint No. 2018-09

v.

Borough of Ringwood (Passaic)
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the January 21, 2020 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 Council shall grant the current Custodian a final opportunity to provide a full and complete response to the 14-point analysis.¹ The response shall include an estimated total cost of the special service charge, inclusive of the estimated time to review and redact the responsive e-mails. The response shall also clarify as to whether the estimated charge is inclusive of the time spent locating the responsive e-mails.
2. **The current Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order. Further, the current Custodian shall simultaneously deliver² certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,³ to the Executive Director.⁴**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

¹ See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>.

² The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

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

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

Interim Order Rendered by the
Government Records Council
On The 26th 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**

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

**Wenke Taule¹
Complainant**

GRC Complaint No. 2018-9

v.

**Borough of Ringwood (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of:

1. All e-mails between Scott M. Heck (“Borough Manager”), Walter Mugdan, Joe Gowers, and Pat Seppi between 2008-2017
2. E-mails between [the Borough Manager] and Ms. Kelley Curran – the Borough of Ringwood’s (“Borough”) liaison to the Highlands Council between 2008-2017³

Custodian of Record: Kelley Halewicz⁴

Request Received by Custodian: December 20, 2017

Response Made by Custodian: December 28, 2017

GRC Complaint Received: January 19, 2018

Background⁵

Request and Response:

On December 20, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 28, 2017, the Custodian responded in writing stating that because both items seek e-mails from the Borough Manager, the responsive records would need to be collected by him. The Custodian also stated that this process would have to be done after regular business hours, as it would occupy the Borough Manager’s computer, limiting communications and substantially disrupt management operations. The Custodian then stated that as a result, a special service charge would be imposed, and once payment is received, the process could take up to sixty (60) days to complete. The Custodian stated that the Borough Manager was in the process of providing a time and cost estimate.

¹ No legal representation listed on record.

² Represented by Richard J. Clemack, Esq., of Richard J. Clemack, Counsellor at Law (Bloomingdale, NJ).

³ The Complainant sought other records that are not at issue in this matter.

⁴ The current Custodian of Record is Nicole Langenmayr.

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.

On December 28, 2017, the Complainant responded to the Custodian, stating that based upon prior telephone conversations she was told by the Custodian that once she clarified her OPRA request as requested, she would obtain the records sought. The Complainant also stated that the Borough was required to process OPRA requests during business hours, and since none of the e-mails are covered under the attorney-client privilege exemption, there should not be any cost or expense to process the request.

On January 4, 2018, the Custodian responded to the Complainant, stating that processing her OPRA request required analysis of a voluminous number of documents, and therefore warranted a special service charge as explained in the December 27, 2017 correspondence. The Custodian included a schedule from the Borough Manager containing the estimated special service charge. Therein, the Borough Manager stated that his assistant would be reviewing and locating responsive e-mails. The Borough Manager then stated that he would then review the located records with the Custodian and mark those records containing advisory, consultative, or deliberative (“ACD”) material and/or records containing information to be redacted for privacy concerns. The Borough Manager then stated that he estimated it would take twenty (20) hours for his assistant and twenty (20) hours for himself to review the responsive records. The Borough Manager stated that his hourly rate was \$27.44 and his assistant’s hourly rate was \$30.93.

On January 5, 2018, the Complainant responded to the Custodian, stating that it should not be necessary for the Custodian or Borough Manager to analyze or censor e-mails or print out attachments. The Complainant stated that the e-mails are not covered by any privilege and would not contain personal information. The Complainant stated that the Borough was putting up roadblocks to deny her OPRA request. The Complainant then stated that she had narrowed her OPRA request several times prior to make the request less broad, and to help narrow the request further she stated that she now only seeks records responsive to Item No. 1.

On January 11, 2018, the Custodian responded to the Complainant, maintained that fulfilling the Complainant’s OPRA request Item Nos. 1 and 2 required the imposition of a special service charge due to the volume of records sought. The Custodian attached another memo from the Borough Manager explaining what work had been done for the request so far. Therein, the Borough Manager stated that so far, his assistant has taken three (3) hours and ten (10) minutes to locate seventy-four (74) documents to or from Pat Seppi comprising 400 or more pages between 2008 through 2013.

Denial of Access Complaint:

On January 19, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). While the Complainant did not elaborate further on the circumstances of her denial, the correspondence between her and the Custodian indicated her objection to the imposition of a special service charge to her request.

Statement of Information:

On February 6, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s clarified OPRA request on December 20,

2017. The Custodian certified that the Borough conducted a sample search of the e-mails requested from 2008-2013 to and from Pat Seppi to demonstrate the potential time and effort required. The Custodian certified that the Borough Manager's assistant continued to search and found 785 e-mails, consisting of 8,858 pages plus 192 maps. The Custodian certified that the effort took 15.62 hours. The Custodian certified that she responded in writing on December 28, 2017, stating that processing the request would require the imposition of a special service charge.

The Custodian argued that she does not object to providing responsive records to the Complainant's OPRA request. The Custodian maintained however, that processing the request involves a large volume of documents which require printing, review for potential exemptions and redactions, preparation of a Vaughn⁶ index, additional printing, and final delivery. The Custodian contended that these tasks require an extraordinary expenditure of time and effort, and therefore warranted a special service charge under N.J.S.A. 47:1A-5(c).

The Custodian asserted that the request at issue was a clarified form of the Complainant's original request. The Custodian contended that a preliminary search based upon the current request resulted in locating 785 e-mails consisting of 8,858 pages, as well as 192 maps that would have to be reviewed and analyzed for potential exemptions. The Custodian asserted that the imposition of a special service charge was valid based upon Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191 (Law Div. 2002), where the agency staff expended over 100 hours retrieving thousands of records. The Custodian also contended that in accordance with Fisher v. Div. of Law, 400 N.J. Super. 61 (App. Div. 2008), she could include the costs of the time and effort of professional consultants in calculating the special service charge.

The Custodian contended that each e-mail would have to be reviewed to determine whether it contained information subject to an OPRA exemption or privilege. The Custodian asserted that among those would be ACD material and personal information. N.J.S.A. 47:1A-1.1. The Custodian also added that the special service charge amount cannot be ascertained until and unless a full review is conducted.

The Custodian provided the following 14-point analysis responses as part of her SOI:

1. What records are requested?

Response: All e-mails between Scott M. Heck ("Borough Manager"), Walter Mugdan, Joe Gowers, and Pat Seppi between 2008-2017.

E-mails between [the Borough Manager] and Ms. Kelley Curran – the Borough of Ringwood's ("Borough") liaison to the Highlands Council between 2008-2017.

2. Give a general nature description and number of the government records requested.

⁶ The term *Vaughn* index is derived from Vaughn v. Rosen, 484 F.2d 820, 826-28, 157 U.S. App. D.C. 340 (D.C. Cir. 1973), cert. denied, 415 U.S. 977, 94 S. Ct. 1564, 39 L. Ed. 2d 873 (1974). See Paff v. Div. of Law, 412 N.J. Super. 140, 161 n. 9, 988 A.2d 1239 (App. Div. 2010), certif. denied, 202 N.J. 45, 994 A.2d 1040 (2010). A *Vaughn* index provides details justifying non-disclosure of documents based on an asserted privileged. Ibid.

Response: The records being sought are e-mails between the Borough Manager, Walter Mugdan, Joe Gowers and Pat Seppi from 2008-2017 (ten (10) years). There are 785 e-mails, 8,858 pages, and 192 maps for this request.

3. What is the period of time over which the records extend?

Response: The request extends from 2008-2017 (ten (10) years).

4. Are some or all of the records sought archived or in storage?

Response: The e-mails sought are on the Borough Manager's computer.

5. What is the size of the agency (total number of employees)?

Response: 95.

6. What is the number of employees available to accommodate the records request?

Response: 3.

7. To what extent do the requested records have to be redacted?

Response: After review, there will likely be e-mails that would meet the criteria for redaction as per OPRA law. Therefore, all the e-mails would have to be printed and assembled and then read by the Borough Manager and Custodian. The Borough Manager and Custodian will have to make determinations for redactions based upon the OPRA law, which because of the technical nature of the documents, the services of professional consultants may be necessary. A Vaughn index will be prepared and unredacted documents will then have to be printed to a PDF for electronic transmission.

8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve, and assemble the records for copying?

Response: Confidential Assistant located the e-mails requested. Her hourly rate is \$30.93 and she spent 15.62 hours locating the e-mails requested. This does not include the time it would take for her to print and assemble the e-mails for review and then collate completed documents.

9. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?

Response: The Borough Manager's hourly rate is \$27.44/hour. The Custodian's hourly rate is \$54.33/hour. Cannot be estimated due to the volume of e-mails without actual review of all 785 e-mails, consisting of 8,885 pages.

10. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to return records to their original storage place?

Response: N/A.

11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?

Response: For those records that meet the requirements for redactions, the Borough may need the advice and/or assistance of the Borough Attorney and/or other professionals to provide the redactions.

12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?

Response: Jacqueline Huber, Confidential Assistant, performed the work associated with the search for the total number of e-mails for this request. She would also be the employee to print, assemble, and collate the documents. Hourly rate is \$30.93.

Scott Heck, Borough Manager would review all documents for possible redactions as provided by law. Hourly rate is \$27.44.

Kelly Halewicz, Borough Clerk/Custodian would assist the Borough Manager in the review of all documents for possible redactions. The Custodian would prepare the Vaughn index. In addition, scan and provide electronic transmission of the documents. Hourly rate is \$54.33

13. What is the availability of information technology and copying capabilities?

Response: Search engines were used to identify e-mails on the Borough Manager's computer contained within the e-mail system to be able to search folder by folder.

Network printers and copiers used by all employees throughout the Borough would be used to print and assemble the documents for review. After review and redactions are complete, documents would need to be scanned and then sent to the requestor.

14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce, and return the requested documents.

Response: In a preliminary manner:

Identify e-mails: 8,885 pages – 15.62 hours actually incurred

Identify, copy, or prepare for inspection: 70 hours estimated only if uninterrupted printing.

By way of example, the Confidential Assistant produced 400 pages in three (3) hours and ten (10) minutes which equates to 126.6. pages per hour. If you divide the 8,885 pages that have been identified not including maps by 126.6., it equals 70 hours of uninterrupted printing. This is unrealistic as the Borough has network copiers and printers used by all employees of the building throughout the course of the day.

Produce and return requested items: While the reading of some of these e-mails will not take a lot of time, maybe 2 minutes per e-mail. Those that are technical in nature will require consultation to determine redactions. Time cannot be estimated.

Redactions entered into Vaugh index: Cannot estimate. Maps to be sent out for reproduction (192 maps). Requestor would be required to pay the actual cost an outside company charges the Borough to reproduce the 192 maps.

Final printing and electronic submission: At a minimum, it is estimated that scanning to PDF and electronic submission would take 70 hours of uninterrupted based solely on the estimated time it would take to identify, copy or prepare for inspection.

Additional Submissions:

On February 7, 2018, the Complainant responded to the Custodian's SOI. Therein, the Complainant asserted that the e-mails are public documents pertaining to an issue of public concern and has the right to access them without redactions. The Complainant asserted that the Borough has not been transparent regarding the matter, resulting in her request for the e-mails. The Complainant added that she was never told about the 192 maps and would have said that does not need nor want the maps. The Complainant also stated that she did not want PDF copies of the e-mails, but instead wanted them forwarded directly to her via e-mail.

On October 15, 2019, the GRC requested an updated 14-point analysis from the Custodian. On October 16, 2019, Custodian's Counsel responded in writing stating that the Custodian was no longer employed by the Borough. Counsel requested an extension of time to respond to contact the Custodian. The GRC granted the request that same day, extending the time to respond to until October 25, 2019.

On October 23, 2019, Counsel requested an additional extension of time to respond to October 30, 2019, as he was still coordinating with the Custodian. The GRC responded that same day, granting the second request for an extension to October 30, 2019.

On October 24, 2019, the Complainant e-mailed the GRC, stating that the Borough held a meeting that evening discussing the current matter. The Complainant stated that the Borough Manager claimed that there were 8,852 pages of records, which the Complainant assumed included both e-mails and maps. The Complainant stated that she did not desire copies of the maps referenced by the Borough Manager.

On October 30, 2019, Counsel responded to the GRC, providing certifications from the Custodian and current Custodian. The Custodian provided the following responses to the 14-point analysis (additions/changes from the SOI's 14-point analysis in italics):

1. What records are requested?

Response: All e-mails between Scott M. Heck (“Borough Manager”), Walter Mugdan, Joe Gowers, and Pat Seppi between 2008-2017.

E-mails between [the Borough Manager] and Ms. Kelley Curran – the Borough of Ringwood’s (“Borough”) liaison to the Highlands Council between 2008-2017.

2. Give a general nature description and number of the government records requested.

Response: The records being sought are e-mails between the Borough Manager, Walter Mugdan, Joe Gowers and Pat Seppi from 2008-2017 (ten (10) years). There are 785 e-mails, 8,858 pages. *Additionally, there are 192 maps connected to the e-mails which the requestor may not now be seeking. There is one (1) e-mail from Ms. Curran of the Highlands Council.*

3. What is the period of time over which the records extend?

Response: The request extends from 2008-2017 (ten (10) years).

4. Are some or all of the records sought archived or in storage?

Response: The e-mails sought are on the Borough Manager’s computer.

5. What is the size of the agency (total number of employees)?

Response: 92.

6. What is the number of employees available to accommodate the records request?

Response: 3.

7. To what extent do the requested records have to be redacted?

Response: *Each e-mail communication would have to be reviewed by the Borough Clerk/Custodian to determine whether any e-mail or part thereof would be subject to an exemption or privilege. E-mails which include the exchange of ideas, proposals, studies and reports which are pre-decisional or deliberative in nature would be subject to redaction. References in any e-mail to a citizen or citizen would have to be scrutinized to determine whether any privacy rights are implicated. Further, certain e-mails may be privileged as attorney work product or attorney-client privilege. In determining whether the exemptions or privileges apply, the Custodian will call upon the Borough Attorney, the*

Borough Manager, and/or the Borough's environmental consultants where technical or scientific documents or issues are involved to determine whether they are attorney privileges, pre-deliberative or pre-decisional. Also, the Custodian will consult with the Borough Manager where necessary to explain the context and the meaning of any technical terminology. A Vaugh index would then be prepared and along with unredacted documents be printed to a PDF for electronic transmission to the requestor. In view of the massive number of documents that must be reviewed, it cannot be determined in advance of reviewing each and every one of them the extent to which the records would have to be redacted.

8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve, and assemble the records for copying?

Response: *The level of personnel is the Confidential Assistant to the Borough Manager. Her hourly rate is \$32.83 and she worked 15.62 hours to locate, retrieve, and assemble the records for review by the Custodian. The Confidential Assistant will print the documents for review by the Custodian and other appropriate persons and print the documents ready for submission to the requestor. The Confidential Assistant will scan the documents in batches to PDF and electronically submit to the requestor.*

9. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?

Response: *The current Custodian's hourly rate is \$51.69/hour. The Borough Manager's hourly rate is \$29.53/hour. The Confidential Assistant's rate is stated above. The number of hours to inspect and examine the records cannot be estimated with particularity at this time due to the volume of e-mails without actual review of all 785 e-mails, consisting of 8,885 pages. See Item Number 14.*

10. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to return records to their original storage place?

Response: N/A.

11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?

Response: *The agency intends to employ the Confidential Assistant to locate, retrieve and assemble records for copying, to print copies of documents for use by the Custodian to print redacted copies after review for exemption for privilege, and to prepare, print, and transmit the documents, either redacted or non-redacted to PDF and then electronically to the requestor. The total number of hours cannot be estimated at this time although 15,62 hours was expended by the said person just locating and retrieving the documents from the manager's computer.*

The current Custodian whose rate is \$51.69 per hour would review all documents as explained in Item No. 7 above.

The Borough Manager's rate is \$29.53 per hour.

12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?

Response: *All of the persons or titles mentioned in the above paragraphs: the current Custodian, Confidential Assistant, Borough Manager, and legal, technical and scientific consultants. The current Custodian's hourly rate is \$51.69 per hour, the Confidential Assistant's rate is \$32.83 per hour and the Borough Manager's hour rate is \$29.53 per hour. The compensation due any legal, technical or scientific consultants cannot be determined at this time.*

13. What is the availability of information technology and copying capabilities?

Response: Search engines were used to identify e-mails on the Borough Manager's computer contained within the e-mail system to be able to search folder by folder.

Network printers and copiers used by all employees throughout the Borough would be used to print and assemble the documents for review. After review and redactions are complete, documents would need to be scanned and then sent to the requestor.

14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce, and return the requested documents.

Response: In a preliminary manner:

Identify e-mails: 8,885 pages – 15.62 hours actually incurred

Identify, copy, or prepare for inspection: 70 hours estimated only if uninterrupted printing.

By way of example, the Confidential Assistant produced 400 pages in three (3) hours and ten (10) minutes which equates to 126.6. pages per hour. If you divide the 8,885 pages that have been identified not including maps by 126.6., it equals 70 hours of uninterrupted printing. This is unrealistic as the Borough has network copiers and printers used by all employees of the building throughout the course of the day.

Produce and return requested items: *The amount of hours necessary to review 8,858 pages cannot be estimated with particularity in advance. If each page took one minute to read, the current Custodian could possibly read an estimated 40 pages per hour which would take an estimated time of at least 200 hours. Of course, the time would be subject to interruptions. If two minutes per page, the number of hours would be doubled. Add to that, extra time would be spent researching and determining if certain documents or parts thereof were subject to exemptions or privileges and the preparation of a Vaughn index.*

Even more time would have to be factored in if the current Custodian is required to consult with professionals as stated in Item No. 7 above. The time of professionals cannot be determined in advance and their rate of compensation for their services would have to be negotiated.

Redactions entered into Vaugh index: Cannot estimate.

Final printing and electronic submission: At a minimum, it is estimated that scanning to PDF and electronic submission would take 70 hours of uninterrupted based solely on the estimated time it would take to identify, copy or prepare for inspection. *Depending on the amount of e-mails, the e-mails would need to be transmitted in small batches in order to be transmitted successfully. This would be done by the Confidential Assistant and the estimated cost for her services would be \$2,298.00 (\$32.83 per hour x 70 hours).*

Review for exemptions or privileges: *Cannot estimate the time that may be involved. While the current Custodian can make such determinations, it can realistically be presumed that the current Custodian would have to interface with legal, technical and scientific consultants to determine in various instances whether an exemption/privilege applies.*

The current Custodian certified that her rate of pay was as follows: \$19.62 per hour as Acting Municipal Clerk, and \$32.07 per hour as Assistant Municipal Treasurer, for a total of \$51.69. The current Custodian certified that while she performs tasks under either position, there was no differentiation in the rate of pay allocated to that position. The current Custodian also certified that because she had only held her position as Acting Municipal Clerk since August 30, 2018, it would take longer to perform the tasks to process the request than estimated by the Custodian.

On October 31, 2019, the Complainant replied to Counsel's response and included certifications. The Complainant stated that she was confused as to why the e-mails between public agencies would need redaction when they would not involve personnel matters or litigation. The Complainant contended that she requested the e-mails because the Borough has not been up front regarding an issue of public concern. The Complainant asserted that the Borough was inflating costs to ensure it would not have to turn over public e-mails.

Analysis

Special Service Charge

Initially, the GRC notes that the Complainant's December 20, 2017 OPRA request sought e-mails between the Borough Manager and four (4) identified individuals within a specific time frame. This request is invalid on their face because they failed to identify a specific subject and/or content of the e-mail. See Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010). However, in matters where a request was overly broad on its face but the custodian was able to locate records, the Council has followed Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) in determining that the request contained sufficient information for record

identification. See Bond v. Borough of Washington (Warren), GRC Complaint No. 2009-324 (March 2011); Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2014-92 (September 2014). Here, the Custodian was clearly able to locate a number of responsive records. Based on this, the GRC declines to address the invalid OPRA request issue.

Whenever a records custodian asserts that fulfilling an OPRA records request requires an “extraordinary” expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides 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 is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an *extraordinary expenditure of time and effort to accommodate the request*, the public agency may charge, in addition to the actual cost of duplicating the record, a *special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies . . .*

[Id. (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 a variety of factors. These factors were discussed in Courier Post, 360 N.J. Super. at 199. There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the “extraordinary burden” placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

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

Here, the Custodian provided responses to the 14-point analysis in her SOI. However, while the Custodian detailed the hourly wages of the employees tasked with performing the work, she failed to provide an estimated time and total cost to review the e-mails for redactions. Additionally, the Complainant, subsequent to receiving the SOI, stated that she did not want copies of the 192 maps the Custodian located, for which a special service charge would apply. Thus, the GRC requested an updated 14-point analysis on October 15, 2019.

In the updated 14-point analysis, the Custodian removed the duplication of the 192 maps as part of the potential cost. However, the Custodian maintains that an estimate for the time and total cost of reviewing and redacting the e-mails could not be made. In both analyses, the Custodian claims that the only feasible method of getting an estimate would be to conduct the review itself. Therefore, the Custodian failed to provide a total estimated special service charge in accordance with the framework outlined in Courier Post, 360 N.J. Super. at 199. Furthermore, it is unclear from the analyses whether the Custodian intends to include the time spent locating the e-mails as part of the cost. Without providing an estimated time and total cost, inclusive of the task of reviewing and redacting the responsive e-mails, the GRC is unable to make an adequate determination as to whether the special service charge is warranted.

Accordingly, the Council shall grant the current Custodian a final opportunity to provide a full and complete response to the 14-point analysis. The response shall include an estimated total cost of the special service charge, inclusive of the estimated time to review and redact the responsive e-mails. The response shall also clarify as to whether the estimated charge is inclusive of the time spent locating the responsive e-mails.

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 Council shall grant the current Custodian a final opportunity to provide a full and complete response to the 14-point analysis.⁷ The response shall include an estimated total cost of the special service charge, inclusive of the estimated time to review and redact the responsive e-mails. The response shall also clarify as to whether the estimated charge is inclusive of the time spent locating the responsive e-mails.
2. **The current Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order. Further, the current**

⁷ See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf> .

Custodian shall simultaneously deliver⁸ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁹ to the Executive Director.¹⁰

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

Prepared By: Samuel A. Rosado
Staff Attorney

January 21, 2020¹¹

⁸ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁹ "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."

¹⁰ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

¹¹ This complaint was prepared for adjudication at the Council's January 28, 2020 meeting, but could not be adjudicated due to a lack of quorum.