



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**

**February 23, 2021 Government Records Council Meeting**

Joseph M. Longo  
Complainant

Complaint No. 2018-124

v.

Camden County Municipal Utilities Authority  
Custodian of Record

At the February 23, 2021 public meeting, the Government Records Council (“Council”) considered the February 16, 2021 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s May 19, 2020 Interim Order because she responded in the prescribed time frame providing copies of the records for *in camera* review and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The *In Camera* Examination reveals that the requested “bid breakdown” of Emerson’s proposal contains trade secrets and proprietary information which if disclosed would give an advantage to competitors. N.J.S.A. 47:1A-1.1; Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 169 (App. Div. 2011); Commc’ns Workers of America v. Rousseau, 417 N.J. Super. 341, 361 (App. Div. 2010). Thus, the Custodian lawfully denied access. N.J.S.A. 47:1A-6.

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 23<sup>rd</sup> Day of February 2021

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 25, 2021**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director  
February 23, 2021 Council Meeting**

**Joseph M. Longo<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-124**

v.

**Camden County Municipal Utilities Authority<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of the “[c]omplete bid breakdown submitted by [Emerson Process Management Power & Water Solutions, Inc. (“Emerson”)] for contract re: Authorized Resolution #R-18:2-44 – for 3 yr contract to [Emerson] for support of the [Camden County Municipal Utilities Authority (“CCMUA”)]’s open based Supervisory Control and Data Acquisition (SCADA) System.”

**Custodian of Record:** Kim Michelini<sup>3</sup>

**Request Received by Custodian:** May 22, 2018; June 25, 2018

**Response Made by Custodian:** June 27, 2018

**GRC Complaint Received:** July 3, 2018

**Records Submitted for *In Camera* Examination:** Nine (9) copies of “Section E” of Emerson’s proposal withheld from disclosure under OPRA’s exemptions for trade secrets and proprietary information.

**Background**

**May 19, 2020 Council Meeting:**

At its May 19, 2020 public meeting, the Council considered the April 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 GRC must conduct an *in camera* review of Section E of Emerson’s proposal to determine the validity of the Custodian’s assertion that same is exempt from disclosure under OPRA’s exemptions for trade secrets and proprietary information. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Michael J. Watson, Esq. of Brown & Connery, LLP (Westmont, N.J.).

<sup>3</sup> The Custodian of Record at the time of the OPRA request was Laurence E. Rosoff, Esq.

2. **The Custodian shall deliver<sup>4</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see conclusion No. 1 above), a document or redaction index<sup>5</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>6</sup> that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the current Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On May 20, 2020, the Council distributed its Interim Order to all parties on. On May 28, 2020, the Custodian responded to the Council's Interim Order. The Custodian provided nine (9) copies of the requested records at issue for *in camera* review. The Custodian also provided a certified confirmation of compliance to the Executive Director.

The Custodian certified that the record, comprising "Section E" of Emerson's bid proposal, was the only portion which contained a "bid breakdown" as requested by the Complainant. The Custodian certified that Emerson's proposal stated that "[t]his document contains information proprietary to Emerson []; it is submitted in confidence . . . ." The Custodian maintained that the records were denied under OPRA's trade secrets and proprietary information provision.

### Analysis

#### Compliance

At its May 19, 2020 meeting, the Council ordered the Custodian to provide the GRC with nine (9) copies of the record withheld from disclosure for *in camera* review within five (5) business days from receipt of the Council's Interim Order. The Council also ordered the Custodian to simultaneously provide certified confirmation of compliance to the Executive Director." On May 20, 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 May 28, 2020.

On May 28, 2020, the fifth (5<sup>th</sup>) business day after receipt of the Council's Order, the Custodian responded in writing, providing nine (9) copies of the requested record for *in camera* review, along with a document index. The Custodian also provided a certified confirmation of compliance to the Executive Director.

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<sup>4</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

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

<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."

Therefore, the Custodian complied with the Council’s May 19, 2020 Interim Order because she responded in the prescribed time frame providing copies of the records for *in camera* review and simultaneously provided certified confirmation of compliance to the Executive Director.

### **Unlawful Denial of Access**

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

OPRA provides that:

A government record shall not include . . . trade secrets and proprietary commercial or financial information obtained from any source. For the purposes of this paragraph, trade secrets shall include data processing software obtained by a public body under a licensing agreement which prohibits its disclosure (emphasis added).

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

In Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140 (App. Div. 2011), the Appellate Division elaborated on defining trade secret and proprietary information and its application to OPRA’s proprietary and trade secret exemption:

Relying on the Court’s guidance set forth in Lamorte Burns & Co. v. Walters, 167 N.J. 285, 299-301, 770 A.2d 1158 (2001), we considered “the key elements” to determine when commercial financial information was proprietary. [Commc’ns Workers of America v. Rousseau, 417 N.J. Super. 341, 356, 9 A.3d 1064 (App. Div. 2010)]. Lamorte suggested we must analyze “the relationship of the parties at the time of disclosure[,] . . . the intended use of the information[,]” and “the expectations of the parties.” Ibid. (citing Lamorte, *supra*, 167 N.J. at 299-300, 770 A.2d 1158). “[U]nder OPRA, if the document contains commercial or proprietary information it is not considered a government record and not subject to disclosure.” Id. at 358, 9 A.3d 1064. We concluded the investment agreements sought by the plaintiffs were proprietary as their content was not intended for wide dissemination, the “[d]efendants’ expectation of confidentiality [was] manifest” and the agreements delineated the specific terms and specific persons who may review the information. Id. at 359, 9 A.3d 1064. Further,

[e]ach agreement contains specific information about the capitalization of the partnership, its commencement and termination date, and other information pertinent to the operational fortunes of the partnership. Finally, each agreement is a complex document.

Each reflects years of experience and expertise by trained legal and financial professionals. Id. at 359-60, 9 A.3d 1064.

In analyzing whether information qualifies as “trade-secrets,” a term not defined by OPRA, Id. at 360, 9 A.3d 1064, we considered the Court's prior reliance on Comment b of the Restatement of Torts § 757 (1939). Id. at 361, 9 A.3d 1064 (citing Hammock v. Hoffmann-LaRoche, 142 N.J. 356, 384, 662 A.2d 546 (1995)). The comment provides: “[a] trade secret may consist of any . . . compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” Ibid. (quoting Restatement of Torts § 757 cmt. b (1939)). Other considerations include the extent to which the information is known outside of the owner’s business, the extent to which it is known by employees of the owner, the measures taken to guard the secrecy of the information, the value of the information to the owner and competitors, the effort expended to develop the information, and the ease or difficulty by which the information can be duplicated. Ibid. (citing Hoffmann-LaRoche, 142 N.J. at 384, 662 A.2d 546).

“Trade secrets are a peculiar kind of property. Their only value consists in their being kept private. If they are disclosed or revealed, they are destroyed.” Trump's Castle Assocs. v. Tallone, 275 N.J. Super. 159, 163, 645 A.2d 1207 (App. Div. 1994) (quoting In re Iowa Freedom of Info. Council, 724 F.2d 658, 662 (8th Cir. 1983)).

[Newark Morning Ledger, 423 N.J. Super. at 169.]

In the matter before the Council, the Custodian denied access under the trade secrets and proprietary information, and competitors and bidders exemptions. This complaint ensued, where the Complainant contended that the requested information was public knowledge, as it was read aloud at a public hearing.

The GRC conducted an *in camera* examination on the submitted record. Upon review, the GRC is satisfied that the Custodian lawfully denied access. The record breaks down the pricing information into several categories which included Emerson’s warranty support and maintenance, software upgrades, training and application support, hourly rates for factory time, daily rates for on-site time, and upgrades to Emerson-manufactured and licensed software. Such information represents “unique pricing information” related to Emerson’s licensed products and services. See Commc’ns Workers of America, 417 N.J. Super. at 361 (quoting Trump’s Castle Assocs., 275 N.J. Super. at 162). Releasing this type of pricing information could allow competitors to knowingly lower prices against Emerson or artificially lower prices throughout the industry to undercut Emerson’s position. See Id. Additionally, the cover page of Emerson’s proposal along with its “Commercial Description” page states that the proposal contains confidential and proprietary information. As noted in Newark Morning Ledger, the existence of conditional safeguards limiting disclosure is a factor in determining whether information can be construed as “trade secret information.” 423 N.J. Super. at 169. Therefore, based upon the totality of the circumstances, the

GRC finds that Section E of Emerson’s proposal contains trade secrets and proprietary information that would give an advantage to competitors if disclosed.

Accordingly, the *In Camera* Examination reveals that the requested “bid breakdown” of Emerson’s proposal contains trade secrets and proprietary information which if disclosed would give an advantage to competitors. N.J.S.A. 47:1A-1.1; Newark Morning Ledger, 423 N.J. Super. at 169; Commc’ns Workers of America, 417 N.J. Super. at 361. Thus, the Custodian lawfully denied access. N.J.S.A. 47:1A-6.

### **Knowing & Willful**

No analysis necessary.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council’s May 19, 2020 Interim Order because she responded in the prescribed time frame providing copies of the records for *in camera* review and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The *In Camera* Examination reveals that the requested “bid breakdown” of Emerson’s proposal contains trade secrets and proprietary information which if disclosed would give an advantage to competitors. N.J.S.A. 47:1A-1.1; Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 169 (App. Div. 2011); Commc’ns Workers of America v. Rousseau, 417 N.J. Super. 341, 361 (App. Div. 2010). Thus, the Custodian lawfully denied access. N.J.S.A. 47:1A-6.

Prepared By: Samuel A. Rosado  
Staff Attorney

February 16, 2021



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**

**May 19, 2020 Government Records Council Meeting**

Joseph M. Longo  
Complainant

Complaint No. 2018-124

v.

Camden County Municipal Utilities Authority  
Custodian of Record

At the May 19, 2020 public meeting, the Government Records Council (“Council”) considered the April 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 GRC must conduct an *in camera* review of Section E of Emerson’s proposal to determine the validity of the Custodian’s assertion that same is exempt from disclosure under OPRA’s exemptions for trade secrets and proprietary information. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
2. **The Custodian shall deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see conclusion No. 1 above), a document or redaction index<sup>2</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>3</sup> that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council’s Interim Order.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the current Custodian’s compliance with the Council’s Interim Order.

<sup>1</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

<sup>2</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>3</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."



Interim Order Rendered by the  
Government Records Council  
On The 19<sup>th</sup> 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**

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

**Joseph M. Longo<sup>1</sup>  
Complainant**

**GRC Complaint No. 2018-124**

v.

**Camden County Municipal Utilities Authority<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of the “[c]omplete bid breakdown submitted by [Emerson Process Management Power & Water Solutions, Inc. (“Emerson”)] for contract re: Authorized Resolution #R-18:2-44 – for 3 yr contract to [Emerson] for support of the [Camden County Municipal Utilities Authority (“CCMUA”)]’s open based Supervisory Control and Data Acquisition (SCADA) System.”

**Custodian of Record:** Kim Michelini<sup>3</sup>

**Request Received by Custodian:** May 22, 2018; June 25, 2018

**Response Made by Custodian:** June 27, 2018

**GRC Complaint Received:** July 3, 2018

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

**Request and Response:**

On May 22, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the original Custodian seeking the above-mentioned records. On June 25, 2018, the Complainant submitted the same request to the original Custodian via facsimile. On June 27, 2018, Andrew Kricun responded in writing on behalf of the original Custodian denying access to the request under OPRA’s exemption for trade secrets and proprietary information. N.J.S.A. 47:1A-1.1. Mr. Kricun also stated that disclosure of the requested bid breakdown would provide an unfair advantage to bidders. N.J.S.A. 47:1A-1.1.

**Denial of Access Complaint:**

On July 3, 2018, the Complainant filed a Denial of Access Complaint with the Government

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Michael J. Watson, Esq. of Brown & Connery, LLP (Westmont, N.J.).

<sup>3</sup> The Custodian of Record at the time of the OPRA request was Laurence E. Rosoff, Esq.

<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.

Records Council (“GRC”). The Complainant asserted that he requested the complete bid breakdown submitted by Emerson for the contract mentioned in CCMUA’s resolution No. 18:2-44. The Complainant contended that he was denied access on June 27, 2018. The Complainant asserted that the requested information was not proprietary and that the bid results were opened and publicly read aloud. The Complainant therefore asserted that the requested information was public knowledge and should be released.

Statement of Information:

On July 25, 2018, the GRC sent the original Custodian a request for the Statement of Information (“SOI”). The Custodian failed to submit the SOI to the GRC. On August 2, 2018, the GRC sent the original Custodian a “No Defense” letter, stating that if the GRC did not receive the SOI within three (3) business days, the complaint would proceed to adjudication based only upon the information contained within the complaint. The original Custodian failed to submit the SOI or otherwise respond to the GRC’s notice.

On April 21, 2020, the GRC tentatively scheduled the matter for adjudication at its April 28, 2020 meeting. Subsequently thereafter, Stephanie Madden of the CCMUA informed the GRC that the original Custodian was no longer with the agency. Ms. Madden also stated that the original Custodian’s e-mail remained active but was not being monitored. Therefore, the GRC elected to table the matter from the April 2020 meeting to provide the CCMUA the opportunity to submit a completed SOI.

On May 6, 2020, the Custodian filed an SOI. The Custodian certified that the CCMUA did not receive the Complainant’s May 22, 2018 OPRA request but did receive the second request on June 25, 2018. The Custodian certified that upon reviewing Emerson’s proposal, Section E entitled “Fees” was the only section containing a “bid breakdown” and was therefore the only section potentially responsive to the request. The Custodian certified that the proposal’s cover page stated, “[t]his document contains information proprietary to Emerson []; it is submitted in confidence . . . .” The Custodian also certified that prior to responding, the CCMUA reviewed the Complainant’s commercial website, and believed that the Complainant’s company was a competitor to Emerson. The Custodian certified that the CCMUA responded on June 27, 2018 denying access under OPRA’s “trade secrets and proprietary information” and “competitive advantage” exemptions.

Providing additional background information, the Custodian certified that the CCMUA publicly advertised a Request for Proposal (“RFP”) in December 2017. The Custodian certified that on January 10, 2018, the CCMUA received one (1) proposal in response to the RFP from Emerson. The Custodian certified that on February 20, 2018, the CCMUA passed resolution No. 18:2-44, awarding a contract with Emerson. The Custodian certified that the CCMUA and Emerson executed a Procurement and Service Agreement on March 9, 2018.

The Custodian argued that while OPRA did not define “trade secrets,” New Jersey Courts have recognized that a “trade secret may consist of any . . . information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors . . . .” Commc’ns Workers of America, 417 N.J. Super. 341, 361 (quoting Hammock v. Hoffman-LaRoche, 142 N.J. 356, 384 (1995)). The Custodian asserted that this information may include

“pricing and marketing techniques.” Id. (quoting Trump’s Castle Assocs. v. Tallone, 275 N.J. Super. 159, 162 (App. Div. 1994).

The Custodian asserted that Section E contained specific, itemized, and detailed pricing information comprising Emerson’s total proposal price. The Custodian asserted that this pricing information included Emerson’s warranty support and maintenance, software upgrades, training and application support, hourly rates for factory time, daily rates for on-site time, and upgrades to Emerson-manufactured and licensed software. The Custodian argued that such information constituted “unique pricing information” directly related to Emerson’s licensed products and services. The Custodian asserted that the software referenced in Section E suggested it was developed and licensed by Emerson, and therefore only Emerson would know the associated pricing information. The Custodian therefore argued that such information qualified as “trade secret information” under Commc’ns Workers of America, 417 N.J. Super. 341.

The Custodian asserted that if Emerson’s pricing information were disclosed, it would provide an advantage to competitors or bidders such as the Complainant. N.J.S.A. 47:1A-1.1. The Custodian asserted that the CCMUA acknowledged that Emerson’s software and services at issue were related to “proprietary computer software” pursuant to N.J.S.A. 40A:11-5(i)(dd). The Custodian asserted that if Competitors obtained Emerson’s pricing information, they would gain a competitive advantage against Emerson in future bids by offering lower prices to undercut its position, citing Commc’ns Workers of America, 417 N.J. Super. at 361.

The Custodian also argued that Emerson’s proposal stated that it was considered “proprietary” and “submitted in confidence.” The Custodian argued that Section E of the proposal was the most likely example of proprietary and trade secret information. The Custodian argued that the CCMUA acted pursuant to its statutory right and duty to protect Emerson from economic and competitive harm by withholding Section E from access.

Lastly, the Custodian argued that because it appeared that the Complainant’s company was a direct competitor with Emerson, the CCMUA had a responsibility to prevent economic harm to bidders like Emerson by withholding trade secrets and proprietary information from public disclosure. The Custodian asserted that the CCMUA’s resolution No. 18:2-44 already contained the total price of Emerson’s proposal, and therefore called into question why the Complainant sought an itemized breakdown of same.

The Custodian requested that the Council deny the relief requested by the Complainant.

### **Analysis**

#### **Unlawful Denial of Access**

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

In Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council<sup>5</sup> that accepted the custodian's legal conclusion for the denial of access without further review. The Appellate Division noted that "OPRA contemplates the GRC's meaningful review of the basis for an agency's decision to withhold government records . . . . When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers." Id. The Court stated that:

[OPRA] also contemplates the GRC's *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the 'Open Public Meetings Act,' N.J.S.A. 10:4-6 to -21, it also provides that the GRC 'may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.' N.J.S.A. 47:1A-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

[Id. at 355.]

Further, the Court found that:

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal . . . . There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC's obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

[Id.]

In the instant matter, the Complainant asserted that because Emerson's proposal was opened and read in public session, the bid breakdown should be considered public knowledge and subject to access. The Custodian asserted that Section E of Emerson's proposal constituted the "bid breakdown" sought by the Complainant. The Custodian argued that the record contained detailed pricing information and was therefore withheld under OPRA's exemptions for trade secrets and proprietary information. N.J.S.A. 47:1A-1.1. The Custodian asserted that the pricing information itemized Emerson's rates for its support services as well as its proprietary and licensed software services.

Notwithstanding the Custodian's description, a "meaningful review" is necessary to determine whether Section E of Emerson's proposal should be exempt from disclosure under OPRA. The GRC must therefore review same in order to determine the full applicability of exemption.

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<sup>5</sup> Paff v. N.J. Dep't of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).

Therefore, the GRC must conduct an *in camera* review of Section E of Emerson's proposal to determine the validity of the Custodian's assertion that same is exempt from disclosure under OPRA's exemptions for trade secrets and proprietary information. See Paff, 379 N.J. Super. at 346.

### **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 current Custodian's compliance with the Council's Interim Order.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The GRC must conduct an *in camera* review of Section E of Emerson's proposal to determine the validity of the Custodian's assertion that same is exempt from disclosure under OPRA's exemptions for trade secrets and proprietary information. See Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
2. **The Custodian shall deliver<sup>6</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted record (see conclusion No. 1 above), a document or redaction index<sup>7</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>8</sup> that the record provided is the record requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the current Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado  
Staff Attorney

April 21, 2020<sup>9</sup>

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<sup>6</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

<sup>7</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>8</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>9</sup> This complaint was prepared for adjudication at the Council's April 28, 2020 meeting but was tabled for further review.