



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 28, 2023 Government Records Council Meeting

Eliza Schleifstein
Complainant

Complaint No. 2020-213

v.

Randolph Township School District (Morris)
Custodian of Record

At the February 28, 2023 public meeting, the Government Records Council (“Council”) considered the February 21, 2023 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:

1. The Custodian complied with the Council’s January 31, 2023 Interim Order because he responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the requested attorney bills. N.J.S.A. 47:1A-6. Further, the Custodian failed to adhere to the Council’s August 30, 2022 Interim Order. However, the Custodian lawfully imposed a special service charge for a portion of the Complainant’s request, and ultimately provided the responsive attorney bills in accordance with the Council’s January 31, 2023 Interim Order. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 28th Day of February 2023

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: March 6, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
February 28, 2023 Council Meeting**

**Eliza Schleifstein¹
Complainant**

GRC Complaint No. 2020-213

v.

**Randolph Township School District (Morris)²
Custodial Agency**

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

1. E-mails between Jeanne Stifelman and
 - a. Marc Zitomer, which were then forwarded to 1) any then-Randolph Board of Education (“Board”) members, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly
 - b. 1) Any then-members of the Board, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly, on which 5) any then-Board members, 6) David Browne, 7) Jennifer Fano, 8) Marc Zitomer, or 9) Carol Strowbridge were copied or BCCed
 - c. 1) Any then-members of the Board, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly, on which no one was copied
 - d. Any member of the public on which any of the following were copied or blind copied: 1) Any then-members of the Board, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly

Regarding any of the following topics:

- a. Change in middle school schedule (also known as RMS scheduling)
- b. Elimination of 6th grade cycle classes
- c. Funding or lack of funding for 6th grade cycle classes
- d. Mrs. Stifelman’s public statements at any of the following meetings:
 - 1) RMS Morning Parent Meeting with Carol Strowbridge on or about March 18, 2013
 - 2) RMS Evening Parent Meeting with Carol Strowbridge on or about March 19, 2013
 - 3) March 20, 2013 Board Meeting
 - 4) March 27, 2013 Board Meeting
- e. Mrs. Stifelman’s e-mails or Facebook posts to parents discussing the 6th grade cycle class eliminations, errors in the 2013-14 budget, the Board’s explanations/rationale for RMS restructuring/2013-14 budget/6th grade cycle class elimination

¹ No legal representation listed on record.

² Represented by Marc H. Zitomer, Esq., of Schenck, Price, Smith & King, LLP (Florham Park, NJ).

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

- f. Randolph Township School District (“District”) Communications regarding the 2013-14 budget/6th grade cycle classes/RMS restructuring
- g. Confidentiality, the New Jersey School Board Code of Ethics, or the New Jersey School Ethics Act

This period covers March 1, through April 1, 2013 and also includes a request for any attachments of any of the above e-mails.

- 2. Full threads of e-mails between any then-Board members and:
 - a. Any additional then-Board members (as a To, From, CC, BCC) or
 - b. David Browne (as a To, From, CC, BCC) or
 - c. Jennifer Fano (as a To, From, CC, BCC) or
 - d. Any member of the public (as a To, From, CC)

Regarding any of the following topics:

- a. Any written statements, public comments, e-mails, or Facebook posts made by Jeanne Stifelman about the 2013-14 budget, RMS restructuring or 6th grade cycle classes
- b. Any conversations had with Jeanne Stifelman RMS restructuring or 6th grade cycle classes
- c. Any discussions about conversations which Jeanne Stifelman had with any parent, other Board member, administrator, teacher, or other member of the public or District employee about the 2013-14 budget, RMS restructuring or 6th grade cycle classes

This covers the period from March 1 through April 1, 2013 and includes a request for any attachments to any of the above e-mails.

- 3. E-mail/Statement from Board President Tammy MacKay or Board or District regarding RMS restructuring/2013-14 budget issue/Stifelman statements or comments/6th grade cycle classes sent to the Community on or about March 27, 2013 and any e-mail responses from Jeanne Stifelman or other community members to any then-member of the Board, David Browne or Jennifer Fano. This request includes the full threads of those e-mail exchanges and covers the period from March 1 to April 1, 2013.
- 4. Bills for legal services rendered by Schenck, Price, Smith & King, LLP or any other law firm or evaluation/arbitration/mediation service showing the amounts billed related to any issue which resulted in the following checks being made payable to David and Jeanne Stifelman and coded as “Legal-Outside Settlement” and documented by the following items:
 - a. Jeanne Stifelman’s reference to a “lawsuit involving my child” in her October 25, 2019 4:05 PM e-mail to Eliza Schleifstein from Mrs. Stifelman’s RTNJ.com e-mail address
 - b. Check number 99523 on page 16 of the check register dated 11/15/2018 and FFT Exhibit 1.1 11.20.2018, in the amount of 5,000.00
 - c. Check number 99227 on page 7 of the check register dated 10/11/2018 and FFT Exhibit 1.1 10.16.2018, in the amount of 5,000.00

- d. Check number 98602 on page 7 of the check register dated 8/15/2018 and FFT Exhibit 1.1 8.21.2018, in the amount of 5,000.00
- e. Check number 97442 on page 9 of the check register dated 5/01/2018 and FFT Exhibit 1.1 5-15-2018, in the amount of 30,000.00

Custodian of Record: Stephen Frost

Request Received by Custodian: July 9, 2020

Response Made by Custodian: October 2, 2020

GRC Complaint Received: October 20, 2020

Background

January 31, 2023 Council Meeting:

At its January 31, 2023 public meeting, the Council considered the January 24, 2023 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 the amended findings and recommendations. The Council, therefore, found that:

1. The Custodian failed to comply with the portion of the Council's August 30, 2022 Interim Order requiring production of the requested attorney bills, with redactions where appropriate. The Custodian also failed to comply with the portion of the Council's August 30, 2022 Interim Order seeking confirmation of the Complainant's willingness or refusal to pay for the special service charge. Specifically, the Custodian failed to reference the special service charge in his certification.
2. The Council shall grant the Custodian a final opportunity to provide a complete and accurate response to the Council's August 30, 2022 Interim Order. The response shall include a certification as to the Complainant's willingness to pay the special service charge. The response shall also include providing the Complainant with actual copies of the requested attorney bills, including a document index explaining the lawful basis for any redactions applied where applicable.
3. **The Custodian shall comply with conclusion No. 1 above within ten (10) business days from receipt of the Council's Interim Order. Further, the Custodian shall simultaneously deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.⁶**

⁴ 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.

⁵ "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."

⁶ 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.

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.

Procedural History:

On February 2, 2023, the Council distributed its Interim Order to all parties. On February 16, 2023, the Custodian responded to the Council's Interim Order providing a certification as well as the requested attorney bills with redactions contained therein. The Custodian also included a document index outlining the basis for the redactions.

The Custodian certified that on August 31, 2022, the Complainant notified the District that she declined to purchase the records subject to the special service charge. The Custodian also certified that as of February 16, 2023, he delivered the responsive attorney bills to the Complainant.

Analysis

Compliance

At its January 31, 2023 meeting, the Council ordered the Custodian to certify as to the Complainant's willingness or refusal to pay the special service charge in accordance with the August 30, 2022 Interim Order. The Council also ordered the Custodian to provide the Complainant with the actual copies of the requested attorney bills. The Council provided the Custodian ten (10) business days from receipt of the Council's Interim Order to provide certified confirmation of compliance to the Executive Director, in accordance with R. 1:4-4.

On February 16, 2023, the tenth (10th) business day after receipt of the Council's Order, the Custodian responded in writing, providing redacted copies of the requested attorney bills, along with a document index. The Custodian also certified that the Complainant declined to purchase the records subject to the special service charge on August 31, 2022. Additionally, the Custodian provided certified confirmation of compliance to the Executive Director.

Therefore, the Custodian complied with the Council's January 31, 2023 Interim Order because he responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

Knowing & Willful

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

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1983)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian unlawfully denied access to the requested attorney bills. N.J.S.A. 47:1A-6. Further, the Custodian failed to adhere to the Council's August 30, 2022 Interim Order. However, the Custodian lawfully imposed a special service charge for a portion of the Complainant's request, and ultimately provided the responsive attorney bills in accordance with the Council's January 31, 2023 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's January 31, 2023 Interim Order because he responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the requested attorney bills. N.J.S.A. 47:1A-6. Further, the Custodian failed to adhere to the Council's August 30, 2022 Interim Order. However, the Custodian lawfully imposed a special service charge for a portion of the Complainant's request, and ultimately provided the responsive attorney bills in accordance with the Council's January 31, 2023 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado
Staff Attorney

February 21, 2023



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

January 31, 2023 Government Records Council Meeting

Eliza Schleifstein
Complainant

Complaint No. 2020-213

v.

Randolph Township School District (Morris)
Custodian of Record

At the January 31, 2023 public meeting, the Government Records Council (“Council”) considered the January 24, 2023 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 failed to comply with the portion of the Council’s August 30, 2022 Interim Order requiring production of the requested attorney bills, with redactions where appropriate. The Custodian also failed to comply with the portion of the Council’s August 30, 2022 Interim Order seeking confirmation of the Complainant’s willingness or refusal to pay for the special service charge. Specifically, the Custodian failed to reference the special service charge in his certification.
2. The Council shall grant the Custodian a final opportunity to provide a complete and accurate response to the Council’s August 30, 2022 Interim Order. The response shall include a certification as to the Complainant’s willingness to pay the special service charge. The response shall also include providing the Complainant with actual copies of the requested attorney bills, including a document index explaining the lawful basis for any redactions applied where applicable.
3. **The Custodian shall comply with conclusion No. 1 above within ten (10) business days from receipt of the Council’s Interim Order. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**

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.

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 31st Day of January 2023

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 2, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 31, 2023 Council Meeting**

**Eliza Schleifstein¹
Complainant**

GRC Complaint No. 2020-213

v.

**Randolph Township School District (Morris)²
Custodial Agency**

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

1. E-mails between Jeanne Stifelman and
 - a. Marc Zitomer, which were then forwarded to 1) any then-Randolph Board of Education (“Board”) members, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly
 - b. 1) Any then-members of the Board, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly, on which 5) any then-Board members, 6) David Browne, 7) Jennifer Fano, 8) Marc Zitomer, or 9) Carol Strowbridge were copied or BCCed
 - c. 1) Any then-members of the Board, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly, on which no one was copied
 - d. Any member of the public on which any of the following were copied or blind copied: 1) Any then-members of the Board, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly

Regarding any of the following topics:

- a. Change in middle school schedule (also known as RMS scheduling)
- b. Elimination of 6th grade cycle classes
- c. Funding or lack of funding for 6th grade cycle classes
- d. Mrs. Stifelman’s public statements at any of the following meetings:
 - 1) RMS Morning Parent Meeting with Carol Strowbridge on or about March 18, 2013
 - 2) RMS Evening Parent Meeting with Carol Strowbridge on or about March 19, 2013
 - 3) March 20, 2013 Board Meeting
 - 4) March 27, 2013 Board Meeting
- e. Mrs. Stifelman’s e-mails or Facebook posts to parents discussing the 6th grade cycle class eliminations, errors in the 2013-14 budget, the Board’s explanations/rationale for RMS restructuring/2013-14 budget/6th grade cycle class elimination

¹ No legal representation listed on record.

² Represented by Marc H. Zitomer, Esq., of Schenck, Price, Smith & King, LLP (Florham Park, NJ).

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

- f. Randolph Township School District (“District”) Communications regarding the 2013-14 budget/6th grade cycle classes/RMS restructuring
- g. Confidentiality, the New Jersey School Board Code of Ethics, or the New Jersey School Ethics Act

This period covers March 1, through April 1, 2013 and also includes a request for any attachments of any of the above e-mails.

- 2. Full threads of e-mails between any then-Board members and:
 - a. Any additional then-Board members (as a To, From, CC, BCC) or
 - b. David Browne (as a To, From, CC, BCC) or
 - c. Jennifer Fano (as a To, From, CC, BCC) or
 - d. Any member of the public (as a To, From, CC)

Regarding any of the following topics:

- a. Any written statements, public comments, e-mails, or Facebook posts made by Jeanne Stifelman about the 2013-14 budget, RMS restructuring or 6th grade cycle classes
- b. Any conversations had with Jeanne Stifelman RMS restructuring or 6th grade cycle classes
- c. Any discussions about conversations which Jeanne Stifelman had with any parent, other Board member, administrator, teacher, or other member of the public or District employee about the 2013-14 budget, RMS restructuring or 6th grade cycle classes

This covers the period from March 1 through April 1, 2013 and includes a request for any attachments to any of the above e-mails.

- 3. E-mail/Statement from Board President Tammy MacKay or Board or District regarding RMS restructuring/2013-14 budget issue/Stifelman statements or comments/6th grade cycle classes sent to the Community on or about March 27, 2013 and any e-mail responses from Jeanne Stifelman or other community members to any then-member of the Board, David Browne or Jennifer Fano. This request includes the full threads of those e-mail exchanges and covers the period from March 1 to April 1, 2013.
- 4. Bills for legal services rendered by Schenck, Price, Smith & King, LLP or any other law firm or evaluation/arbitration/mediation service showing the amounts billed related to any issue which resulted in the following checks being made payable to David and Jeanne Stifelman and coded as “Legal-Outside Settlement” and documented by the following items:
 - a. Jeanne Stifelman’s reference to a “lawsuit involving my child” in her October 25, 2019 4:05 PM e-mail to Eliza Schleifstein from Mrs. Stifelman’s RTNJ.com e-mail address
 - b. Check number 99523 on page 16 of the check register dated 11/15/2018 and FFT Exhibit 1.1 11.20.2018, in the amount of 5,000.00
 - c. Check number 99227 on page 7 of the check register dated 10/11/2018 and FFT Exhibit 1.1 10.16.2018, in the amount of 5,000.00

- d. Check number 98602 on page 7 of the check register dated 8/15/2018 and FFT Exhibit 1.1 8.21.2018, in the amount of 5,000.00
- e. Check number 97442 on page 9 of the check register dated 5/01/2018 and FFT Exhibit 1.1 5-15-2018, in the amount of 30,000.00

Custodian of Record: Stephen Frost

Request Received by Custodian: July 9, 2020

Response Made by Custodian: October 2, 2020

GRC Complaint Received: October 20, 2020

Background

November 9, 2022 Council Meeting:

At its November 9, 2022 public meeting, the Council considered the October 27, 2022 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 was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Custodian failed to establish that the complaint should be reconsidered based on illegality or a mistake. The Custodian has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Custodian failed to prove that (a) the Council illegally determined that the requested attorney bills could be disclosed with redactions; and (b) the Council made a mistake in not including the requested attorney bills when assessing the special service charge. Thus, the Custodian's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
2. The Council's August 30, 2022 Interim Order remains in effect and the Custodian shall comply accordingly.

Procedural History:

On November 10, 2022, the Council distributed its Interim Order to all parties. On November 18, 2022, the Complainant e-mailed the GRC, stating that she received a document from the Custodian which he asserted was in response to the Council's Order. The Complainant asserted that the Order required the Custodian to produce the "bills for legal services". The Complainant argued that the document was a screenshot of an Excel spreadsheet listing invoice numbers and amounts, which was not a "bill for legal services". The Complainant argued that the

document lacked a description of legal services, the hours billed, or the identities of the attorneys who performed the services. The Complainant also argued this document could not be used to determine whether the dollar amounts corresponded to actual work performed on the District's behalf. The Complainant argued that the document did not satisfy the Council's Order, and the District should be ordered to produce the actual attorney bills.

Later that same day, the Custodian e-mailed the GRC in response to the Complainant. The Custodian argued that the document was responsive to the Complainant's OPRA request. The Custodian asserted that the Complainant sought the bills for services "showing the amounts billed." The Custodian also asserted that in her December 19, 2020 submission, the Complainant referenced her request for a "single page from a bill which only sets forth the total legal fees charged for a particular matter that implicated a student's rights." The Custodian argued that the provided document was therefore responsive to the Complainant's request. The Custodian also submitted certified confirmation of compliance to the Executive Director.

Analysis

Compliance

At its November 9, 2022 meeting, the Council denied the Custodian's request for reconsideration of its August 30, 2022 Order and therefore said Order remained in effect. The August 30, 2022 Order required the Complainant to remit payment of the special service charge or state her rejection to purchase the records. Further, the Council noted that the Complainant's failure to act within five (5) business days of receiving the charge would be treated as a rejection of the records. The Council also ordered the Custodian to certify to the Complainant's willingness or refusal to pay the special service charge. The Council provided the Custodian ten (10) business days from receipt of the Council's Interim Order to provide certified confirmation of compliance to the Executive Director, in accordance with R. 1:4-4.

Furthermore, the Council ordered the Custodian to provide the Complainant with copies of the responsive attorney bills, with redactions where applicable. The Council also ordered the Custodian to submit certified confirmation of compliance to the Executive Director in accordance with R. 1:4-4. The Council provided the Custodian five (5) business days from receipt of the Council's Interim Order to comply with this portion of the Order.

On November 10, 2022, the Council distributed its Interim Order to all parties. Thus, the Custodian was required to provide the Complainant with copies of the attorney bills by the end of business on November 18, 2022. Additionally, the Complainant was required to remit payment of the special service charge or provide a statement declining to purchase the records by November 18, 2022. Further, the Custodian was required to provide certified confirmation of compliance by November 28, 2022 regarding the Complainant's willingness to purchase the records subject to the special service charge.

On November 18, 2022, the fifth (5th) business day after receipt of the Council's Order, the Custodian responded to the Council's Order, providing a certification and a document purported to be responsive to the Complainant's OPRA request.

Initially, the Custodian’s certification failed to reference the portion of the August 30, 2022 Interim Order regarding the special service charge. Thus, it is unclear from the record whether the Complainant remitted payment or rejected the special service charge.

Furthermore, rather than provide the Complainant with actual copies of the attorney bills, the Custodian elected to create a document containing data allegedly generated from the responsive records, such as the invoice number, matter number, date issued, and amount. This document clearly fails to conform with the Council’s Order explicitly requiring the Custodian to provide actual copies of the actual responsive attorney bills with redactions for information specifically exempt under a specific lawful basis. The Custodian’s attempt to circumvent the Council’s Order and reconsideration denial results in a failure to comply with that portion thereof.

Therefore, the Custodian failed to comply with the portion of the Council’s August 30, 2022 Interim Order requiring production of the requested attorney bills, with redactions where appropriate. The Custodian also failed to comply with the portion of the Council’s August 30, 2022 Interim Order seeking confirmation of the Complainant’s willingness or refusal to pay for the special service charge. Specifically, the Custodian failed to reference the special service charge in his certification.

Accordingly, the Council shall grant the Custodian a final opportunity to provide a complete and accurate response to the Council’s August 30, 2022 Interim Order. The response shall include a certification as to the Complainant’s willingness to pay the special service charge. The response shall also include providing the Complainant with actual copies of the requested attorney bills, including a document index explaining the lawful basis for any redactions applied where applicable.

Knowing & Willful

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the portion of the Council’s August 30, 2022 Interim Order requiring production of the requested attorney bills, with redactions where appropriate. The Custodian also failed to comply with the portion of the Council’s August 30, 2022 Interim Order seeking confirmation of the Complainant’s willingness or refusal to pay for the special service charge. Specifically, the Custodian failed to reference the special service charge in his certification.
2. The Council shall grant the Custodian a final opportunity to provide a complete and accurate response to the Council’s August 30, 2022 Interim Order. The response shall include a certification as to the Complainant’s willingness to pay the special service

charge. The response shall also include providing the Complainant with actual copies of the requested attorney bills, including a document index explaining the lawful basis for any redactions applied where applicable.

3. **The Custodian shall comply with conclusion No. 1 above within ten (10) business days from receipt of the Council's Interim Order. Further, the Custodian shall simultaneously deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.⁶**
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

January 24, 2023

⁴ 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.

⁵ "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."

⁶ 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
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

November 9, 2022 Government Records Council Meeting

Eliza Schleifstein
Complainant

Complaint No. 2020-213

v.

Randolph Township School District (Morris)
Custodian of Record

At the November 9, 2022 public meeting, the Government Records Council ("Council") considered the October 27, 2022 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:

1. The Custodian was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Custodian failed to establish that the complaint should be reconsidered based on illegality or a mistake. The Custodian has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Custodian failed to prove that (a) the Council illegally determined that the requested attorney bills could be disclosed with redactions; and (b) the Council made a mistake in not including the requested attorney bills when assessing the special service charge. Thus, the Custodian's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
2. The Council's August 30, 2022 Interim Order remains in effect and the Custodian shall comply accordingly.

Interim Order Rendered by the
Government Records Council
On The 9th Day of November 2022

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: November 10, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
November 9, 2022 Council Meeting

Eliza Schleifstein¹
Complainant

GRC Complaint No. 2020-213

v.

Randolph Township School District (Morris)²
Custodial Agency

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

1. E-mails between Jeanne Stifelman and
 - a. Marc Zitomer, which were then forwarded to 1) any then-Randolph Board of Education (“Board”) members, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly
 - b. 1) Any then-members of the Board, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly, on which 5) any then-Board members, 6) David Browne, 7) Jennifer Fano, 8) Marc Zitomer, or 9) Carol Strowbridge were copied or BCCed
 - c. 1) Any then-members of the Board, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly, on which no one was copied
 - d. Any member of the public on which any of the following were copied or blind copied: 1) Any then-members of the Board, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly

Regarding any of the following topics:

- a. Change in middle school schedule (also known as RMS scheduling)
- b. Elimination of 6th grade cycle classes
- c. Funding or lack of funding for 6th grade cycle classes
- d. Mrs. Stifelman’s public statements at any of the following meetings:
 - 1) RMS Morning Parent Meeting with Carol Strowbridge on or about March 18, 2013
 - 2) RMS Evening Parent Meeting with Carol Strowbridge on or about March 19, 2013
 - 3) March 20, 2013 Board Meeting
 - 4) March 27, 2013 Board Meeting

¹ No legal representation listed on record.

² Represented by Marc H. Zitomer, Esq., of Schenck, Price, Smith & King, LLP (Florham Park, NJ).

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

- e. Mrs. Stifelman’s e-mails or Facebook posts to parents discussing the 6th grade cycle class eliminations, errors in the 2013-14 budget, the Board’s explanations/rationale for RMS restructuring/2013-14 budget/6th grade cycle class elimination
- f. Randolph Township School District (“District”) Communications regarding the 2013-14 budget/6th grade cycle classes/RMS restructuring
- g. Confidentiality, the New Jersey School Board Code of Ethics, or the New Jersey School Ethics Act

This period covers March 1, through April 1, 2013 and also includes a request for any attachments of any of the above e-mails.

2. Full threads of e-mails between any then-Board members and:
 - a. Any additional then-Board members (as a To, From, CC, BCC) or
 - b. David Browne (as a To, From, CC, BCC) or
 - c. Jennifer Fano (as a To, From, CC, BCC) or
 - d. Any member of the public (as a To, From, CC)

Regarding any of the following topics:

- a. Any written statements, public comments, e-mails, or Facebook posts made by Jeanne Stifelman about the 2013-14 budget, RMS restructuring or 6th grade cycle classes
- b. Any conversations had with Jeanne Stifelman RMS restructuring or 6th grade cycle classes
- c. Any discussions about conversations which Jeanne Stifelman had with any parent, other Board member, administrator, teacher, or other member of the public or District employee about the 2013-14 budget, RMS restructuring or 6th grade cycle classes

This covers the period from March 1 through April 1, 2013 and includes a request for any attachments to any of the above e-mails.

3. E-mail/Statement from Board President Tammy MacKay or Board or District regarding RMS restructuring/2013-14 budget issue/Stifelman statements or comments/6th grade cycle classes sent to the Community on or about March 27, 2013 and any e-mail responses from Jeanne Stifelman or other community members to any then-member of the Board, David Browne or Jennifer Fano. This request includes the full threads of those e-mail exchanges and covers the period from March 1 to April 1, 2013.
4. Bills for legal services rendered by Schenck, Price, Smith & King, LLP or any other law firm or evaluation/arbitration/mediation service showing the amounts billed related to any issue which resulted in the following checks being made payable to David and Jeanne Stifelman and coded as “Legal-Outside Settlement” and documented by the following items:
 - a. Jeanne Stifelman’s reference to a “lawsuit involving my child” in her October 25, 2019 4:05 PM e-mail to Eliza Schleifstein from Mrs. Stifelman’s RTNJ.com e-mail address
 - b. Check number 99523 on page 16 of the check register dated 11/15/2018 and FFT Exhibit 1.1 11.20.2018, in the amount of 5,000.00

- c. Check number 99227 on page 7 of the check register dated 10/11/2018 and FFT Exhibit 1.1 10.16.2018, in the amount of 5,000.00
- d. Check number 98602 on page 7 of the check register dated 8/15/2018 and FFT Exhibit 1.1 8.21.2018, in the amount of 5,000.00
- e. Check number 97442 on page 9 of the check register dated 5/01/2018 and FFT Exhibit 1.1 5-15-2018, in the amount of 30,000.00

Custodian of Record: Stephen Frost

Request Received by Custodian: July 9, 2020

Response Made by Custodian: October 2, 2020

GRC Complaint Received: October 20, 2020

Background

August 30, 2022 Council Meeting:

At its August 30, 2022 public meeting, the Council considered the August 23, 2022 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. Although the Custodian did not timely respond to the Complainant's request seeking an extension of time to provide responsive records, he provided an explanation that would reasonably justify a delay in responding to the Complainant. Furthermore, the explanation justifies the need for an extension until December 1, 2020 to respond to the Complainant. As such, the due to the extenuating circumstances, the Custodian's failure to timely respond and seek an extension of time does not rise to the level of a "deemed" denial pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
2. The Custodian has borne his 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 75 hours is reasonable to retrieve, assemble, review, and redact e-mails potentially responsive to the Complainant's OPRA request item Nos. 1-3. Furthermore, the evidence demonstrates that the Custodian utilized the lowest-paid employees capable of processing the request. See Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 204 (Law Div. 2002); and Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (December 2007). Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
3. **The Complainant shall comply with conclusion No. 2 above within five (5) business days of receipt of such statement by delivering to the Custodian (a)**

payment of the special service charge or (b) a statement declining to purchase these records. The Complainant's failure to take any action within the allotted five (5) business days shall be construed as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5(b) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within ten (10) business days from receipt of the Council's Interim Order, the Custodian shall deliver⁴ to the Executive Director a statement with respect to the Complainant's willingness or refusal to purchase the requested records. The Custodian's response shall be in the form of a legal certification in accordance with N.J. Court Rules, R. 1:4-4.⁵

4. The Custodian unlawfully denied access to the Complainant's OPRA request item No. 4 seeking various attorney bills pertaining to a particular student. N.J.S.A. 47:1A-6. Such records may not be classified as "student records" under N.J.A.C. 6A:32-2.1 solely by the existence of student information contained therein, as such records are expressly required to be disclosed under OPRA. See N.J.S.A. 47:1A-1.1. Rather, the Custodian shall provide the Complainant with the records with appropriate redactions.
5. **The Custodian shall comply with conclusion No. 4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the 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
6. 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 August 31, 2022, the Council distributed its Interim Order to all parties. On September 8, 2022, the Custodian e-mailed the Government Records Council ("GRC") noticing his intent to file a request for reconsideration.

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⁵ "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."

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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.

On September 15, 2022, the Custodian filed a request for reconsideration of the Council's August 30, 2022 Interim Order based on a "mistake" and "illegality."

The Custodian first argued that the Council mistakenly treated the request for attorney bills as separate from the request items which necessitated a special service charge. The Custodian argued that even assuming the attorney bills were government records subject to disclosure, the GRC incorrectly treated the request item as separate and apart from the remainder of the Complainant's OPRA request. The Custodian asserted that the attorney bills should have been accounted for when imposing the special service charge.

The Custodian next argued that the Council improperly ordered disclosure of the attorney bills with redactions. The Custodian contended that because the Complainant knew the identity of the student upon seeking the invoices, the Board could not protect the student's privacy interests by simply redacting the records. Further, the Custodian argued that the Council failed to consider the Board's argument that the bills could not be released pursuant to L.R. v. Camden City Pub. Sch. Dist., 238 N.J. 547 (2019). The Custodian maintained that the attorney bills constituted "student records" since they pertained to a lawsuit involving a specific student therefore could not be released under L.R.

On September 16, 2022, the Complainant submitted objections to the request for reconsideration. The Complainant asserted that the standards to reconsider the matter have not been met, and that the Custodian requested reconsideration merely due to dissatisfaction with the decision.

The Complainant first argued that in its October 6, 2020 response, the Board did not include the attorney bills as part of its special service charge assessment. The Complainant noted that in the chart breaking down the estimated cost per request item, the Custodian indicated no cost for providing the attorney bills. The Complainant argued that the subject bills could be identified and retrieved without any effort, so there should not be an imposed cost.

The Complainant next argued that the Board cited no authority to support the contention that attorney bills should be classified as "student records" by virtue of the Complainant's knowledge of the student's identity. The Complainant maintained that there was no reason to deny the public access to the hours and fees associated with the Board's legal representation. The Complainant further argued that the Custodian's mention of L.R. was a repeat of the arguments raised in the Statement of Information ("SOI").

Lastly, the Complainant contended that the Council should find that the Custodian knowingly and willingly violated OPRA. The Complainant argued that the request for reconsideration was method to delay disclosure and to appease a member of the Board.

On September 21, 2022, the Custodian e-mailed the GRC. The Custodian first contended that because his initial argument was that the attorney invoices could not be disclosed, it would be disingenuous to incorporate them in the special service charge assessment. The Custodian maintained that should the GRC order disclosure, the special service charge should apply to the entirety of the Complainant's request.

The Custodian also rejected the claim that the decision to withhold the attorney invoices was as a favor to a Board member, and not on the legal basis that such records could not be released pursuant to L.R. The Custodian maintained that the Board’s request for reconsideration was made in good faith and the expectation of approval from the Council.

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the Custodian filed the request for reconsideration of the Council’s Order dated August 30, 2022 on September 15, 2022, ten (10) days from the issuance of the Council’s Order.

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D’Atria v. D’Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D’Atria, . . . 242 N.J. Super. at 401. “Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.” Ibid.

[In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).]

Upon review of the parties’ submissions, the GRC finds no colorable claim necessitating reconsideration of the Council’s Interim Order based on illegality. The Custodian argued that the because the Complainant knew the identity of the student, redacting the attorney bills would not adequately protect the student’s privacy rights. The Custodian further maintained that the attorney bills fell under the definition of “student record” pursuant to L.R., 238 N.J. 547. However, these arguments were addressed and given consideration by the GRC, with analysis given to distinguish attorney bills from the definition of “student record” as discussed in the Interim Order.

With respect to the Custodian's allegation that the Council erred by not accounting for the attorney invoices within the special service charge assessment, the GRC distinguished the request items based upon the Custodian's October 6, 2020 response, which estimated the special service charge based upon processing item Nos. 1-3, without reference to the request item seeking attorney bills. Furthermore, the Custodian maintained this assessment in the SOI. Thus, the GRC analyzed the reasonableness of the special service charge without regard to the potential disclosure of the requested attorney bills.

As the moving party, the Custodian was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. See Cummings, 295 N.J. Super. at 384. The Custodian failed to establish that the complaint should be reconsidered based on illegality or a mistake. The Custodian has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. See D'Atria, 242 N.J. Super. at 401. Specifically, the Custodian failed to prove that (a) the Council illegally determined that the requested attorney bills could be disclosed with redactions; and (b) the Council made a mistake in not including the requested attorney bills when assessing the special service charge. Thus, the Custodian's request for reconsideration should be denied. Cummings, 295 N.J. Super. at 384; D'Atria, 242 N.J. Super. at 401; Comcast, 2003 N.J. PUC at 5-6. Thus, the Council's August 30, 2022 Interim Order remains in effect and the Custodian shall comply accordingly.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that

1. The Custodian was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Custodian failed to establish that the complaint should be reconsidered based on illegality or a mistake. The Custodian has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Custodian failed to prove that (a) the Council illegally determined that the requested attorney bills could be disclosed with redactions; and (b) the Council made a mistake in not including the requested attorney bills when assessing the special service charge. Thus, the Custodian's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
2. The Council's August 30, 2022 Interim Order remains in effect and the Custodian shall comply accordingly.

Prepared By: Samuel A. Rosado
Staff Attorney

October 27, 2022



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PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
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LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

August 30, 2022 Government Records Council Meeting

Eliza Schleifstein
Complainant

Complaint No. 2020-213

v.

Randolph Township School District (Morris)
Custodian of Record

At the August 30, 2022 public meeting, the Government Records Council (“Council”) considered the August 23, 2022 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. Although the Custodian did not timely respond to the Complainant’s request seeking an extension of time to provide responsive records, he provided an explanation that would reasonably justify a delay in responding to the Complainant. Furthermore, the explanation justifies the need for an extension until December 1, 2020 to respond to the Complainant. As such, the due to the extenuating circumstances, the Custodian’s failure to timely respond and seek an extension of time does not rise to the level of a “deemed” denial pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
2. The Custodian has borne his 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 75 hours is reasonable to retrieve, assemble, review, and redact e-mails potentially responsive to the Complainant’s OPRA request item Nos. 1-3. Furthermore, the evidence demonstrates that the Custodian utilized the lowest-paid employees capable of processing the request. See Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191, 204 (Law Div. 2002); and Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (December 2007). Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
3. **The Complainant shall comply with conclusion No. 2 above within five (5) business days of receipt of such statement by delivering to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase these records. The Complainant’s failure to take any action within the allotted five**

- (5) business days shall be construed as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5(b) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within ten (10) business days from receipt of the Council's Interim Order, the Custodian shall deliver¹ to the Executive Director a statement with respect to the Complainant's willingness or refusal to purchase the requested records. The Custodian's response shall be in the form of a legal certification in accordance with N.J. Court Rules, R. 1:4-4.²**
4. The Custodian unlawfully denied access to the Complainant's OPRA request item No. 4 seeking various attorney bills pertaining to a particular student. N.J.S.A. 47:1A-6. Such records may not be classified as "student records" under N.J.A.C. 6A:32-2.1 solely by the existence of student information contained therein, as such records are expressly required to be disclosed under OPRA. See N.J.S.A. 47:1A-1.1. Rather, the Custodian shall provide the Complainant with the records with appropriate redactions.
 5. **The Custodian shall comply with conclusion No. 4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵**
 6. 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 30th Day of August 2022

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: August 31, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 30, 2022 Council Meeting**

**Eliza Schleifstein¹
Complainant**

GRC Complaint No. 2020-213

v.

**Randolph Township School District (Morris)²
Custodial Agency**

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

1. E-mails between Jeanne Stifelman and
 - a. Marc Zitomer, which were then forwarded to 1) any then-Randolph Board of Education (“Board”) members, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly
 - b. 1) Any then-members of the Board, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly, on which 5) any then-Board members, 6) David Browne, 7) Jennifer Fano, 8) Marc Zitomer, or 9) Carol Strowbridge were copied or BCCed
 - c. 1) Any then-members of the Board, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly, on which no one was copied
 - d. Any member of the public on which any of the following were copied or blind copied: 1) Any then-members of the Board, 2) David Browne, 3) Jennifer Fano, or 4) Peter Weigly

Regarding any of the following topics:

- a. Change in middle school schedule (also known as RMS scheduling)
- b. Elimination of 6th grade cycle classes
- c. Funding or lack of funding for 6th grade cycle classes
- d. Mrs. Stifelman’s public statements at any of the following meetings:
 - 1) RMS Morning Parent Meeting with Carol Strowbridge on or about March 18, 2013
 - 2) RMS Evening Parent Meeting with Carol Strowbridge on or about March 19, 2013
 - 3) March 20, 2013 Board Meeting
 - 4) March 27, 2013 Board Meeting
- e. Mrs. Stifelman’s e-mails or Facebook posts to parents discussing the 6th grade cycle class eliminations, errors in the 2013-14 budget, the Board’s explanations/rationale for RMS restructuring/2013-14 budget/6th grade cycle class elimination

¹ No legal representation listed on record.

² Represented by Marc H. Zitomer, Esq., of Schenck, Price, Smith & King, LLP (Florham Park, NJ).

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

- f. Randolph Township School District (“District”) Communications regarding the 2013-14 budget/6th grade cycle classes/RMS restructuring
- g. Confidentiality, the New Jersey School Board Code of Ethics, or the New Jersey School Ethics Act

This period covers March 1, through April 1, 2013 and also includes a request for any attachments of any of the above e-mails.

- 2. Full threads of e-mails between any then-Board members and:
 - a. Any additional then-Board members (as a To, From, CC, BCC) or
 - b. David Browne (as a To, From, CC, BCC) or
 - c. Jennifer Fano (as a To, From, CC, BCC) or
 - d. Any member of the public (as a To, From, CC)

Regarding any of the following topics:

- a. Any written statements, public comments, e-mails, or Facebook posts made by Jeanne Stifelman about the 2013-14 budget, RMS restructuring or 6th grade cycle classes
- b. Any conversations had with Jeanne Stifelman RMS restructuring or 6th grade cycle classes
- c. Any discussions about conversations which Jeanne Stifelman had with any parent, other Board member, administrator, teacher, or other member of the public or District employee about the 2013-14 budget, RMS restructuring or 6th grade cycle classes

This covers the period from March 1 through April 1, 2013 and includes a request for any attachments to any of the above e-mails.

- 3. E-mail/Statement from Board President Tammy MacKay or Board or District regarding RMS restructuring/2013-14 budget issue/Stifelman statements or comments/6th grade cycle classes sent to the Community on or about March 27, 2013 and any e-mail responses from Jeanne Stifelman or other community members to any then-member of the Board, David Browne or Jennifer Fano. This request includes the full threads of those e-mail exchanges and covers the period from March 1 to April 1, 2013.
- 4. Bills for legal services rendered by Schenck, Price, Smith & King, LLP or any other law firm or evaluation/arbitration/mediation service showing the amounts billed related to any issue which resulted in the following checks being made payable to David and Jeanne Stifelman and coded as “Legal-Outside Settlement” and documented by the following items:
 - a. Jeanne Stifelman’s reference to a “lawsuit involving my child” in her October 25, 2019 4:05 PM e-mail to Eliza Schleifstein from Mrs. Stifelman’s RTNJ.com e-mail address
 - b. Check number 99523 on page 16 of the check register dated 11/15/2018 and FFT Exhibit 1.1 11.20.2018, in the amount of 5,000.00
 - c. Check number 99227 on page 7 of the check register dated 10/11/2018 and FFT Exhibit 1.1 10.16.2018, in the amount of 5,000.00

- d. Check number 98602 on page 7 of the check register dated 8/15/2018 and FFT Exhibit 1.1 8.21.2018, in the amount of 5,000.00
- e. Check number 97442 on page 9 of the check register dated 5/01/2018 and FFT Exhibit 1.1 5-15-2018, in the amount of 30,000.00

Custodian of Record: Stephen Frost

Request Received by Custodian: July 9, 2020

Response Made by Custodian: October 2, 2020

GRC Complaint Received: October 20, 2020

Background⁴

Request and Response:

On July 9, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records and provided the Custodian an extension until July 30, 2020. On August 5, 2020, the Custodian responded to the Complainant in writing stating that given the extensive nature of the request and the ongoing public health crisis, the District would address the OPRA request by December 1, 2020.

On October 2, 2020, the Custodian responded to the Complainant in writing stating that for request item Nos. 1-3, a special service charge would be imposed to process. The Custodian attached a spreadsheet breaking down each request item and the estimated cost to fulfill. The Custodian stated that if the Complainant accepts the charge, then she must provide a check in the amount of \$5,729.98. The Custodian stated that the final charge may be more or less than the estimate based upon the actual work performed. The Custodian also stated that “any attempts to break this request up into separate requests, and/or send on different dates, will still require a special service charge.”

Regarding request item No. 4, the Custodian stated that such records were denied as student records, and under New Jersey law could not be released even if redactions were made to student information.

Denial of Access Complaint:

On October 20, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant initially asserted that she believed the Custodian and the District were using the March 20, 2020 amendment to OPRA as an excuse to not respond to her request. The Complainant asserted that around the time the Custodian responded on October 2, 2020, the District was dealing with a potential COVID-19 outbreak, whereas in the preceding weeks the Custodian was unable to provide a response when the District was closed for summer.

⁴ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Regarding the special service charge to process item Nos. 1-3, the Complainant asserted that the hours estimated to process each item was excessive. The Complainant asserted that the items sought e-mails from just a four (4) week period among a handful of individuals and disputed the Custodian's spreadsheet indicating that processing the request would take the Custodian an estimated 35 hours at \$74.18/hour and 40 hours at \$78.35/hour by Peter Emmel, the District's IT head. In particular, the Complainant asserted that item No. 3 sought an e-mail and its responses pertaining to a single statement sent by the Board and should not take 15 hours alone to process. The Complainant further asserted that the Custodian should have the means of locating relevant documents using keywords or similar tools. The Custodian asserted that the search should thus take only a few hours and provided examples of keywords the Custodian could utilize.

The Complainant next argued that the proposed charge did not utilize the rate of the lowest pay staff member able to perform the work. The Complainant contended that Mr. Emmel was the Director of Technology with the District and was the second-highest paid member of the District's non-academic staff. The Complainant also asserted that the Custodian was the fourth highest paid non-academic staff with the District's Central Office. The Complainant contended that other IT staff could perform searches of e-mail correspondence and were paid substantially less than Mr. Emmel, along with the clerical staff working under the Custodian. Thus, the Complainant asserted that the proposed charge was excessive and unreasonable. See Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191 (Law Div. 2002); Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015).

Regarding item No. 4, the Complainant asserted that OPRA did not permit the denial of a request for attorney bills in their entirety and highlighted that OPRA specifically provides that invoices are to be made available. N.J.S.A. 47:1A-5(e). The Complainant noted that the Custodian had the ability to redact the bills of any identifying information, just as he could redact information that would fall under the attorney-client privilege, referencing the GRC's Citizen's Guide to OPRA and Handbook for Custodians of Records.

The Complainant further asserted that her request did not seek records pertaining to the identity of a student in any legal case, and therefore would not constitute "student records." The Complainant asserted that her request is distinguished from the facts in L.R. v. Camden City Pub. Sch. Dist., 452 N.J. Super. 56 (App. Div. 2017), aff'd, 238 N.J. 547 (2019) in that she sought only the amounts charged in the requested bills, and thus did not implicate the privacy needs of the student. The Complainant further argued that defining attorney bills as "student records" could potentially insulate a school's legal spending from any public review, as every legal invoice would invariably involve a matter pertaining to a particular student.

The Complainant also noted that the District provided records related to this incident involving a student in response to another OPRA request. The Complainant therefore argued that the student's parent and the District waived any confidentiality associated with the incident. The Complainant also highlighted other situations in which the Custodian turned over records containing student information in response to OPRA requests.

Lastly, the Complainant argued that the Custodian was committing a knowing and willful violation of OPRA. The Complainant asserted that the Custodian is providing cover for Board

members by denying access to records entirely and demanding a high fee to disclose the remainder.

Statement of Information:

On December 16, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on July 9, 2020. The Custodian certified that he responded in writing on August 5, 2020, stating that an extension until December 1, 2020 was needed. The Custodian certified that another response was provided in writing on October 2, 2020, stating that processing request item Nos. 1-3 required a special service charge, and denied access to the item No. 4.

The Custodian first asserted that the response was timely, even if the Complainant did not give the District an extension. The Custodian noted that the March 20, 2020 OPRA amendment signed by Governor Philip D. Murphy suspended the seven (7) business day deadline to respond when, “a state of emergency, public health emergency, or state of local disaster emergency” has been declared. N.J.S.A. 47:1A-5(i)(2). The Custodian also asserted that Governor Murphy declared a State of Emergency and a Public Health Emergency (“PHE”) on March 9, 2020 in Executive Order No. 103 (Gov. Murphy 2020) (“EO 103”). The Custodian argued that between receiving the request and responding on August 5, 2020, the vast majority of District personnel were working remotely, and the Custodian was required to take on additional work.

The Custodian further noted that even if the Complainant did not unilaterally grant an extension, and that he did not respond “as soon as possible” in accordance with N.J.S.A. 47:1A-5(i)(2), the response was still timely in accordance with the “Special Statement of the Government Records Council 2020-01” dated March 26, 2021. The Custodian asserted that the statement asserted that “business days” did not include days where the agency was not open for “regular business hours.” The Custodian argued that because most District staff were operating remotely and did not return to normal business hours until August 31, 2020, he was not required to provide a response until September 9, 2020, or seven (7) business days after the District resumed normal business hours.

The Custodian next asserted that the extension was proper, given the caselaw permitting custodians to extend the time to respond to OPRA requests despite opposition from the complainants. Criscione v. Town of Guttenberg, GRC Complaint No. 2010-68 (November 2010). The Custodian further asserted that the extension was justified given the extensive nature of the Complainant’s request. The Custodian also noted that he provided the Complainant with a complete response on October 2, 2020, well before the December 1, 2020 extension deadline.

The Custodian maintained that what constitutes an “extraordinary amount of time and effort” under OPRA and the applicability of imposing a special service charge is done on a case-by-case basis. N.J.S.A. 47:1A-5(c); Carluccio v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2008-10 (September 2009). The Custodian argued that the special service charge to process item Nos. 1-3 was warranted and reasonable. The Custodian contended that these request items constituted a broad and onerous request seeking documents between multiple individuals and groups, spanning multiple topics. The Custodian noted that request item No. 1 sought e-mails regarding ten (10) different subject matters. The Custodian also noted that request item No. 3

sought statements from not only the Board President but also the District and the Board in general. The Custodian asserted that the request item also sought responses from not just any Board member but from any member of the public.

The Custodian also contended that the charge utilized the lowest-paid qualified staff. The Custodian asserted that the subjects the Complainant requested required using a District employee familiar with Board activities and finances. The Custodian asserted that other clerical staff were not confidential employees and would not have potentially responsive records from Board members or the Superintendent. The Custodian also argued that Mr. Emmel was the only IT professional authorized to conduct the requisite searches needed to process the request, which contained sensitive and confidential information.

The Custodian next asserted that he properly denied access to the request item No. 4 pursuant to L.R., 238 N.J. 547. The Custodian contended that while OPRA permits access to legal bills pursuant to N.J.S.A. 47:1A-5(e), the District was not relying on the attorney-client privilege, but instead argued that the bills pertained to a particular student, and therefore are considered “student records” not subject to disclosure. The Custodian asserted that the Wolosky decision cited by the Complainant supported the District’s position, since the court conceded that attorney bills “could reveal information about the students’ special education classifications and the extent of legal involvement in their education” and therefore constituted student records. Slip op. at *6. The Custodian asserted that while Wolosky permitted release of the records with redactions, the Supreme Court in L.R. subsequently held that student records could not be released to the Complainant without a court order, notwithstanding redactions made to personally identifiable information (“PII”).

The Custodian next argued that he did not knowingly or willfully violate OPRA. The Custodian maintained that the Complainant’s request was timely responded to, and that the imposition of a special service charge was proper.

Additional Submissions:

On December 19, 2020, the Complainant responded to the Custodian’s SOI. The Complainant first argued that the District continued to operate between March and August 2020, and the Custodian had complete access to his office building during that period. The Complainant also asserted that all senior staff and administration returned to their offices permanently on August 1, 2020. The Complainant also noted that an extension was never requested, but instead was told that her request would be addressed by December 1, 2020.

The Complainant also maintained that the amendment to OPRA was not intended for agencies to take five (5) months to respond to an OPRA request. The Complainant noted that the District was able to respond to another OPRA request with several request items and subparts in twenty-nine (29) business days despite being submitted on May 19, 2020. The Complainant asserted that several other OPRA requests were received and fulfilled by the District in the months since she submitted her request. The Complainant argued that the District would not consider a five (5) month delay to be “reasonable” or “as soon as possible” for students or parents and they should be held to the same standard.

The Complainant next maintained that the special service charge was not warranted and reasonable, but instead punitive and fraudulent. The Complainant asserted that the Custodian failed to provide any explanation or evidence on how he calculated the estimated time to process the request. The Complainant contended that the Custodian's estimation was pure speculation, and both he and Counsel failed to provide a per-page calculation while rejecting the Complainant's references to previous cases. The Complainant noted that in other recent OPRA requests containing several request items and multiple subcategories, the District was able to respond to the request within thirty (30) calendar days and without imposing a special service charge. The Complainant thus argued that the District was unfairly imposing a special service charge against her.

Regarding the requested invoices, the Complainant contended that she was not seeking student information, but only dollar amounts contained in the invoices. The Complainant maintained that the Custodian wished to expand the definition of "student records" to where a school district's legal invoices would never be subject to OPRA. The Complainant also asserted that the Custodian provided student information in response to a previous request.

Finally, the Complainant argued that the Custodian knowingly and willfully violated OPRA. The Complainant asserted that the Custodian imposed the special service charge in bad faith and failed to provide evidence to support their estimated cost. The Complainant argued that the special service charge was imposed for the purpose of prevent her access to public records under OPRA.

On December 29, 2020, the Custodian submitted a sur-reply in response to the Complainant. The Custodian maintained that the District went virtual on March 16, 2020 and did not return to regular business hours until August 31, 2020. The Custodian maintained that his office building was operating in the same manner as every other District office at the time, which was entirely virtual apart from individuals entering briefly to retrieve paperwork.

The Custodian further noted that the District did not require the Complainant's permission to extend the time to respond. The Custodian also asserted that she submitted her OPRA request in July, when the District was working to reopen the schools during the pandemic. The Custodian asserted that the timing and voluminous nature of the request necessitating the extension of time to respond and noted that his duties as the District's Assistant Business Administrator expanded beyond those of a records custodian.

With regard to the special service charge, the Custodian maintained that the District provided a detailed spreadsheet outlining the details justifying the estimated charge, and that the Complainant's references to other OPRA requests and responses had no bearing on the request at issue.

Analysis

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁵ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

Additionally, the Legislature amended OPRA on March 20, 2020, in response to the global pandemic. P.L. 2020, c.10. Based on that amendment, N.J.S.A. 47:1A-5(i)(2) now provides that:

During a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency, the deadlines by which to respond to a request for, or grant or deny access to, a government record under paragraph (1) of this subsection or subsection e. of this section shall not apply, *provided, however, that the custodian of a government record shall make a reasonable effort, as the circumstances permit, to respond to a request for access to a government record within seven business days or as soon as possible thereafter.*

[Id. (Emphasis added).]

"Paragraph (1) of this subsection" refers to N.J.S.A. 47:1A-5(i) and "subsection e. of this section" refers to N.J.S.A. 47:1A-5(e).

Furthermore, in Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011), the custodian responded in writing to the complainant's request on the fourth (4th) business day by seeking an extension of time to respond and providing an anticipated date by which the requested records would be made available. The complainant did not consent to the custodian's request for an extension of time. The Council stated that:

The Council has further described the requirements for a proper request for an extension of time. Specifically, in [Starkey v. NJ Dep't of Transp., GRC Complaint Nos. 2007-315 through 317 (February 2009)], the Custodian provided the Complainant with a written response to his OPRA request on the second (2nd) business day following receipt of said request in which the Custodian requested an extension of time to respond to said request and provided the Complainant with an

⁵ A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

anticipated deadline date upon which the Custodian would respond to the request. The Council held that “because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) [and] N.J.S.A. 47:1A-5(i).”

Additionally, in Criscione, GRC 2010-68, the Council held that the custodian did not unlawfully deny access to the requested records, stating in pertinent part that:

[B]ecause the Custodian provided a written response requesting an extension on the sixth (6th) business day following receipt of the Complainant’s OPRA request and providing a date certain on which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian’s request for an extension of time [to a specific date] to respond to the Complainant’s OPRA request was made in writing within the statutorily mandated seven (7) business day response time.

Although extensions are rooted in well-settled case law, the Council need not find valid every request for an extension containing a clear deadline. In Ciccarone v. N.J. Dep’t of Treas., GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014), the Council found that the custodian could not lawfully exploit the process by repeatedly rolling over an extension once obtained. In reaching the conclusion that the continuous extensions resulted in a “deemed” denial of access, the Council looked to what is “reasonably necessary.”

To determine if the extended time for a response is reasonable, the GRC must first consider the complexity of the request as measured by the number of items requested, the ease in identifying and retrieving requested records, and the nature and extent of any necessary redactions. Ciccarone, GRC 2013-280. The GRC must next consider the amount of time the custodian already had to respond to the request. Id. Finally, the GRC must consider any extenuating circumstances that could hinder the custodian’s ability to respond effectively to the request.⁶ Id.

In the instant matter, Complainant submitted her request on July 9, 2020, and unilaterally provided the Custodian an extension to July 30, 2020 to respond. The Custodian responded on August 5, 2020, stating that an extension was needed until December 1, 2020 to address the request. The Custodian would thereafter respond to the Complainant on October 2, 2020, stating that a special service charge would be imposed to process the request. The Complainant contended that the extension was excessive and unwarranted, based upon knowledge of the Custodian completing other OPRA requests within thirty (30) days of receipt and contending that the Custodian’s office was not as burdened by the pandemic as claimed. The Custodian asserted that the nature of the request as well as the timing of its receipt necessitated the extension.

⁶ “Extenuating circumstances” could include, but not necessarily be limited to, retrieval of records that are in storage or archived (especially if located at a remote storage facility), conversion of records to another medium to accommodate the requestor, emergency closure of the custodial agency, or the custodial agency’s need to reallocate resources to a higher priority due to *force majeure*.

The GRC notes that the issue an extension of time's reasonableness generally involves an analysis under Ciccarone. However, the March 20, 2020 amendment to N.J.S.A. 47:1A-5 and the following factual circumstances warrants a new review. Specifically, the Custodian certified that at the time he received the OPRA request, there the District's offices were closed and operating virtually while the State remained under a Public Health Emergency ("PHE") declared in response to the COVID-19 pandemic. The Custodian further certified that the District's resources were focused on reopening the schools at the time of the request, necessitating an extension until December 1, 2020, and provided evidence that the District was operating virtually until August 31, 2020. Moreover, the Custodian ultimately provided a response on October 2, 2020, well before the extended deadline. Lastly, the GRC notes the request's complexity as an additional factor favoring the reasonableness of the extension, as it contains three (3) request items with multiple subcategories.

Therefore, although the Custodian did not timely respond to the Complainant's request seeking an extension of time to provide responsive records, he provided an explanation that would reasonably justify a delay in responding to the Complainant. Furthermore, the explanation justifies the need for an extension until December 1, 2020 to respond to the Complainant. As such, the due to the extenuating circumstances, the Custodian's failure to timely respond and seek an extension of time does not rise to the level of a "deemed" denial pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11.

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, 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.

In the matter before the Council, the Complainant disputed the assessed special service charge of \$5,729.98 to process request item Nos. 1-3. The charge allotted an estimated 35 hours at \$74.18/hour to the Custodian, and 40 hours at \$78.35/hour to Mr. Emmel. The Complainant asserted that the estimated time was unreasonable given the limited date range of the request and when compared with other GRC cases pertaining to a special service charge. The Complainant further argued that the Custodian was not utilizing the lowest-paid employees capable of performing the work.

Conversely, the Custodian argued in the SOI that the fee was warranted and reasonable. The Custodian argued that the request sought correspondence involving a wide variety of senders and recipients and a multitude of subject matters. The Custodian argued that the request items were deceptively numbered 1-3, yet each contains several subparts of subjects as well as senders and recipients. The Custodian further certified that he and Mr. Emmel were the only employees capable of performing the work since they had the proper access to the e-mail accounts listed in the Complainant's request, and therefore calculating the charge based upon their hourly rates was appropriate.

The GRC must determine whether the assessed charge was reasonable and warranted. When special service charges are at issue, the GRC will typically require a custodian to complete a 14-point analysis questionnaire prior to deciding on the charge issue. However, the facts of this complaint as presented to the GRC do not require the submission of such a questionnaire.

A review of the foregoing strongly supports that the estimated expenditure of 75 hours represents an extraordinary amount of time and effort to process the OPRA request given the nature of the request itself, and the limited resources available to fulfill the request. See Rivera v. Rutgers, The State Univ. of New Jersey, GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). Specifically, the request items outline a multitude of subject matters, notwithstanding the limited date range requested. Further, the request items identify numerous individual and

categories of senders and recipients. The GRC is persuaded that searching through each identified account for each subject matter would take an extraordinary amount of time and effort complete and process, notwithstanding the review for potential redactions.

The GRC next addresses whether the proposed fee of \$5,729.98 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).

Upon review, the GRC is satisfied that the cost is accurate as the Custodian identified himself as an employee capable of fulfilling the OPRA request, along with Mr. Emmel, the District's IT head. The Custodian certified that both he and Mr. Emmel had the appropriate knowledge and confidential access to search through the District's e-mail accounts for responsive records. Although the Complainant contended that other members of the IT staff or non-academic staff could process her OPRA request, the Custodian certified to the contrary that those employees had neither the requisite knowledge nor clearance to search through the District's e-mail accounts for responsive records. See Courier Post, 360 N.J. Super. at 204, and Janney, GRC 2006-205

Accordingly, the Custodian has borne his 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 2009-311. Specifically, the evidence supports that the estimated 75 hours is reasonable to retrieve, assemble, review, and redact e-mails potentially responsive to the Complainant's OPRA request item Nos. 1-3. Furthermore, the evidence demonstrates that the Custodian utilized the lowest-paid employees capable of processing the request. See Courier Post, 360 N.J. Super. at 204, and Janney, GRC 2006-205. Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

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.

OPRA further provides that:

The provisions of [OPRA] shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; regulation

promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a).]

The regulations of the State Board of Education and the Commissioner define a “student record” as “. . . information related to an individual student *gathered within or outside the school district and maintained within the school district*, regardless of the physical form in which it is maintained.” N.J.A.C. 6A:32-2.1 (emphasis added). The regulations of the State Board of Education and the Commissioner of Education provide that “[o]nly authorized organizations, agencies or persons as defined herein shall have access to student records . . .” to include “persons from outside the school if they have written consent of the parent . . .” N.J.A.C. 6A:32-7.5(e)(14). Finally, the regulations require that “[i]n complying with this section, individuals shall adhere to requirements pursuant to [OPRA] and [FERPA].” N.J.A.C. 6A:32-7.5(g). To this end, the Council has looked to these exceptions in determining whether a complainant can access “student records” in part or whole under OPRA. See *i.e.* Martinez v. Edison Bd. of Educ. (Middlesex), GRC Complaint No. 2014-126 (May 2015); but see Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2014-92 (September 2014).

More recently, the Appellate Division addressed OPRA and the disclosure of “student records” in L.R., 452 N.J. Super. 56. In one of the four (4) consolidated cases, the trial court ordered the school district to disclose student records requested under OPRA, with redactions made to all PII. The Appellate Division held that redacting PII from a document does not remove its classification as a “student record.” Id. at 83. The court found that “N.J.A.C. 6A:32-7.5(g)’s does not expressly incorporate FERPA’s provisions for the redaction of PII into the [New Jersey Pupil Records Act (“NJPR”) or its regulations. Moreover, nothing in the NJPR or its regulations states that sufficiently anonymized documents, with all PII removed, are no longer “student records” under N.J.A.C. 6A:32-1.” Id. at 85.

The court further discussed the interplay between the NJPR, FERPA and OPRA:

It is reasonable to conclude that N.J.A.C. 6A:32-7.5(g) centrally concerns functionality—a district’s *processing* of student record requests from an authorized person or organization. See K.L., *supra*, 423 N.J. Super. at 350, 32 A.3d 1136 (“In providing access to school records in accordance with N.J.A.C. 6A:32-7.5, school districts must also comply with the requirements of OPRA and FERPA, N.J.A.C. 6A:32-7.5(g).”). For instance, if a school district receives an OPRA request from an authorized person or organization listed under N.J.A.C. 6A:32-7.5(e), then it must process that request in compliance with OPRA and FERPA requirements. Nothing in the plain language of N.J.A.C. 6A:32-7.5(g), however, supersedes or nullifies the limitations of “authorized” parties, as set forth at N.J.A.C. 6A:32-7.5(a) and (e). Hence, we agree with the judge in the Hillsborough case that a requestor cannot gain access to a student record unless the requestor satisfies one of the “[a]uthorized” categories listed in N.J.A.C. 6A:32-7.5(e)(1) through (16).

[Id. at 86-87 (emphasis in original).]⁷

In the instant matter, the Custodian asserted that the requested attorney invoices constituted “student records” since they pertained to litigation involving a particular student. The Custodian also noted that the Complainant was not the parent or guardian of the particular student. The Custodian argued that in accordance with L.R., such records may not be disclosed even with redactions unless the Complainant obtained a court order. The Complainant contended that she only sought the dollar amounts contained in the invoices and was not seeking any student information. The Complainant argued that to hold that the requested invoices were “student records” would result in any school district being allowed to withhold any attorney invoice from access since they invariably would pertain to legal actions involving a student.

There is no dispute among the parties that attorney bills or invoices are “government records” generally subject to access. See N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-5(e). Further, both parties note that despite OPRA’s existing exemption for attorney-client privileged information, attorney bills containing such information remain subject to access, with appropriate redactions. In other words, attorney bills do not become attorney-client privileged communications in their entirety. That the Legislature expressly stated this principle in the statute highlights the importance of maintaining public access to these records. See N.J.S.A. 47:1A-1.1; Handbook for Custodians of Records.

The same principle is applicable here, in that attorney bills or invoices do not become “student records” by virtue of containing student information or that the itemization pertains to a particular student. To hold otherwise would shield virtually every school district’s attorney invoice or bill from public access since they would invariably contain legal matters involving students. This would run afoul of OPRA’s purpose to “maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.” Mason v. City of Hoboken, 196 N.J. 51, 64, (2008) (quoting Asbury Park Press v. Ocean Cty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)). Thus, attorney bills or invoices pertaining to a particular student may be redacted and released to ensure the privacy interests of students are upheld while also maintaining OPRA’s purpose of maximizing public knowledge of public affairs.

Accordingly, the Custodian unlawfully denied access to the Complainant’s OPRA request item No. 4 seeking various attorney bills pertaining to a particular student. N.J.S.A. 47:1A-6. Such records may not be classified as “student records” under N.J.A.C. 6A:32-2.1 solely by the existence of student information contained therein, as such records are expressly required to be disclosed under OPRA. See N.J.S.A. 47:1A-1.1. Rather, the Custodian shall provide the Complainant with the records with appropriate redactions.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated

⁷ The Supreme Court of New Jersey subsequently affirmed by equal division noting that “N.J.A.C. 6A:32-7.5(g) confirms that individuals and entities may request student records in accordance with OPRA’s provisions, and that educational agencies must comply with those provisions when they respond to such requests.” L.R., 238 N.J. at 569.

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. Although the Custodian did not timely respond to the Complainant's request seeking an extension of time to provide responsive records, he provided an explanation that would reasonably justify a delay in responding to the Complainant. Furthermore, the explanation justifies the need for an extension until December 1, 2020 to respond to the Complainant. As such, the due to the extenuating circumstances, the Custodian's failure to timely respond and seek an extension of time does not rise to the level of a "deemed" denial pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).
2. The Custodian has borne his 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 75 hours is reasonable to retrieve, assemble, review, and redact e-mails potentially responsive to the Complainant's OPRA request item Nos. 1-3. Furthermore, the evidence demonstrates that the Custodian utilized the lowest-paid employees capable of processing the request. See Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 204 (Law Div. 2002); and Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (December 2007). Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
3. **The Complainant shall comply with conclusion No. 2 above within five (5) business days of receipt of such statement by delivering to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase these records. The Complainant's failure to take any action within the allotted five (5) business days shall be construed as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5(b) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within ten (10) business days from receipt of the Council's Interim Order, the Custodian shall deliver⁸ to the Executive Director a statement with respect to the Complainant's willingness or refusal to purchase the requested records. The Custodian's**

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.

response shall be in the form of a legal certification in accordance with N.J. Court Rules, R. 1:4-4.⁹

4. The Custodian unlawfully denied access to the Complainant's OPRA request item No. 4 seeking various attorney bills pertaining to a particular student. N.J.S.A. 47:1A-6. Such records may not be classified as "student records" under N.J.A.C. 6A:32-2.1 solely by the existence of student information contained therein, as such records are expressly required to be disclosed under OPRA. See N.J.S.A. 47:1A-1.1. Rather, the Custodian shall provide the Complainant with the records with appropriate redactions.
5. **The Custodian shall comply with conclusion No. 4 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹⁰ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,¹¹ to the Executive Director.¹²**
6. 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

August 23, 2022

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 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.