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April 12, 2012

**Via Email and Regular Mail**

Catherine Starghill, Esq., Executive Director  
Government Records Council  
101 South Broad Street  
PO Box 819  
Trenton, NJ 08625-0819

**Re: George F. Burdick, Jr. v. Township of Franklin (Hunterdon)  
GRC Complaint No. 2010-99**

Dear Executive Director Starghill:

This office serves as legal counsel to the Township of Franklin, Hunterdon County, in the above referenced matter. On April 4, 2012, my office received via email a copy of the Interim Order of the Government Records Council. As part of that Order, the Custodian was ordered to deliver to the Council unredacted copies of the Susalis Invoices 2923 and 2938 within five business days. The purpose of my letter is to advise you that the Township is not in possession of unredacted copies of those records; we have not been able to take possession of same, and would like to explain the steps we have taken to comply with the Council's Order. Most of the facts stated below are already part of the Council's record; however, certifications can be provided regarding any additional facts if the Council requires same.

As you are aware, these invoices are for work performed by Nick Susalis in August and September of 2009. Mr. Susalis was hired by the Township's Special Council, John O'Reilly, Esq.<sup>1</sup> as part of an investigation into a personnel matter. Mr. Susalis submitted his invoices to Mr. O'Reilly, who in turn included Mr. Susalis' charges on his legal bill submitted to the Township. The Township never received copies of Mr. Susalis' invoices. When Mr. Burdick made his OPRA request in 2010, the then Township Attorney, Valarie Kimson, obtained the invoices from Mr. O'Reilly. Ms. Kimson redacted the records herself and only provided the Township Clerk with redacted copies. The Township Clerk has never been in the possession of

<sup>1</sup> John O'Reilly is no longer Special Counsel to the Township of Franklin. The Wahba litigation is pending in the Appellate Division and the Township is represented by Courter, Kobert & Cohen, P.C.

unredacted copies of the invoices. The Township is unsure what Ms. Kimson did with the unredacted copies, whether she redacted the originals, lost the originals or discarded them. When her files were turned over to her successor, Tony Koester, Esq., the unredacted invoices were not included. I am in possession of Mr. Koester's files and the invoices are not a part of the file.

For the past few months, the Township Clerk has been attempting to obtain copies of the unredacted invoices in an effort to complete her file. In addition, she received an OPRA request in February 2012 requesting the same documents. In an attempt to fulfill that request, the Clerk contacted Mr. Reilly and requested the invoices. Mr. O'Reilly refused to turn over the records, telling her that they cannot be provided under OPRA because the litigation is still pending and they are attorney-client privileged.

On April 4, 2012, the Township received a copy of the Order and immediately attempted to obtain a copy of the unredacted invoices. The Township Clerk immediately contacted Nick Susalis directly and requested the invoices. Mr. Susalis stated that he could not turn over the invoices without permission from his client, John O'Reilly. The Township Clerk, realizing that her prior requests of Mr. O'Reilly were denied, contacted my office and requested that I contact Mr. O'Reilly on her behalf to stress the legal importance of complying with Council's Order. On April 4, 2012, I called and emailed Mr. O'Reilly requesting the invoices. Attached hereto is a copy of my email to Mr. O'Reilly. I received a return call from Mr. O'Reilly on April 5<sup>th</sup>. I explained to him the situation and requested the invoices. He told me that the invoices were attorney-client privileged and should not be turned over. I explained to him that they would be reviewed *in camera* by the GRC and, further, that it was the Township's privilege, not his. I then summarized the ruling by Council specifically explaining Schuler v. Borough of Bloomsbury (Hunterdon). I forwarded a copy of the Council's Order to him while we were on the phone. Attached is a copy of that email. He then mentioned that the Township had disputed one of his bills and so he had not been paid in full from the Township. I told him that I was aware of the dispute but it was irrelevant to this matter and the invoices must be turned over to the GRC. He told me he would see if he could pull them out of his file before he left on vacation. To date, I still have not received the invoices from Mr. O'Reilly.

The Township and I have made every attempt to obtain the invoices requested by the GRC. At this point, the Township is not sure what else it can do to obtain this document. The only suggestion I could offer is that the GRC, as an administrative agency, could issue a subpoena to the attorney or the investigator to obtain the records. The Township will do anything it can to assist the GRC in obtaining these records. Based on the foregoing, I respectfully request that the Council not penalize the Township for failing to produce the invoices because the Custodian has never had these records in her possession and has made numerous unsuccessful attempts to obtain them.

Catherine Starghill, Esq., Executive Director  
Government Records Council  
April 12, 2012  
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If you have any questions or require any additional information, please do not hesitate to contact my office.

Very truly yours,



Katrina L. Campbell

KLC/js

cc: George Burdick  
Ursula V. Stryker, Township Clerk