



ANTONELLI KANTOR, PC
ATTORNEYS AT LAW

Partners

DANIEL ANTONELLI*
JARRID H. KANTOR*
YULIEIKA TAMAYO*
Of Counsel
LORI D. REYNOLDS*
PETER J. LUPO
EMILY BAYARD

Associates

CHRISTINA S. ATALLAH
GREGORY D. EMOND*
ALEXANDER M. AVELLAN
MICHAEL A. SABONY*
KOURTNEY L. COOKE

aknjlaw.com

354 Eisenhower Parkway, Suite 1000
Livingston, NJ 07039
p 908.623.3676
f 908.866.0336

Writers Contact
d 908.623.3672
e jkantor@aknjlaw.com

*Admitted to NJ & NY

2009 Morris Avenue
Union, NJ 07083
Please respond to Livingston office

September 15, 2021

Via E-mail

LTown United

RE: OPRA Request for All Legal Bills and Adjustments to Bills from Antonelli Kantor (the "OPRA Request")

Dear Sir/Madam:

As you are aware, I serve as the Township Attorney for the Township of Livingston (the "Township"). In that connection, I am in receipt of the above referenced OPRA Request and supplemental request to review those documents previously produced. Please be advised that as to your original request, it was the Township's understanding that you were simply seeking the total amount invoiced by Antonelli Kantor, P.C. (the "Firm") and time spent by the Firm on Township matters. Such invoices were redacted in a manner to: (i) provide you with the information you requested as quickly as possible; and (ii) to avoid the time and expense of thoroughly reviewing all 219 pages to redact those entries to which the appropriate attorney-client and deliberative process privileges apply. Based on comments at the meeting and the clarifying email of even-date herewith, the Township now understands you are requesting all time entries of the Firm which are not exempt from OPRA and/or the common law to be included in the response.

As to this clarified request, please be advised New Jersey Courts have found that "OPRA contemplates that identification of privilege material is an integral part of a public agency's response to a request for production of government records." *Fisher v. Division of Law*, 400 N.J. Super. 61, 65-66 (App. Div. 2008, citing N.J.S.A. 47:1A-5(g)). "Even though an agency's custodian of records ordinarily should be able to identify privileged material, there may be circumstances where review of the records by the agency's professional or supervisory personnel is required to make this determination." *Id.* at 72-73, *citing Courier Post*, 360 N.J. Super. at 202. Such review may be especially appropriate when an OPRA request is made to an agency like the Division of Law, which provides legal advice to other agencies of state government that is subject to the attorney-client privilege. *Id.* (Internal citations omitted). In this case, given your request seeks legal bills that contain attorney-client and/or deliberative process privileges, the documents will need to be reviewed by counsel.

Further, be advised that a special service charge will be applied to this request. Specifically, the New Jersey Supreme Court has held that:

...requestors may be assessed costs for preparation work involved in responding to a request. See, N.J.S.A. 47:1A-5(c) (allowing reasonable special service charge when records cannot be reproduced using ordinary equipment or reproduction involves extraordinary expenditure of time and effort); N.J.S.A. 47:1A-5(d) (allowing reasonable special charge if a 'substantial amount of manipulation' is required).

Burnett v. County of Bergen, 198 N.J. 408, 438 (2009).

We estimate that it will take 50 hours to review and redact the documents requested and create the appropriate log. Our rate to the Township is \$165.00/hour, but in an effort to make the service charge more reasonable, we are willing to conduct the review at a discounted rate of \$75.00/hour for a total of \$3,750.00. As to this service charge, New Jersey Courts have specifically held that:

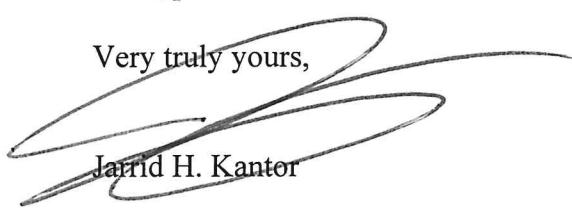
Although it is unclear how much, if any, of the time expended to comply with appellant's OPRA request has or will involve review of e-mails and computer files to identify privileged material, we see no reason why that time should be excluded from the special service charge. The OPRA contemplates that identification of privileged material is an integral part of a public agency's response to a request for production of government records.

Id. 72-73, relying on N.J.S.A. 47:1A-5(g). As such, the time spent by counsel reviewing the emails for privilege materials may be included in the Special Service Charge.

Please advise whether you would like to proceed with this request given the Special Service Charge.

If you have any questions or would like to discuss, please do not hesitate to contact me.

Very truly yours,



Jarrod H. Kantor

cc: Glenn Turtletaub, Township Clerk
Barry Lewis, Township Manager.