

Hanover Township Public Schools

61 Highland Avenue
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Vanessa M. Wolsky
Business Administrator/Board Secretary

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November 15, 2023

VIA E-MAIL [opra+request-49596-687235da@requests.opramachine.com]

Michael Gottesman

Re: Open Public Records Act Request

Dear Mr. Gottesman:

The Hanover Township Board of Education ("District") records custodian received your Open Public Records Act ("OPRA") request on October 10, 2023. On October 19, 2023, the District obtained an extension of time to respond until November 16, 2023. As such, the District is timely responding to your request in accordance with New Jersey law.

Your request seeks the following records:

- 1) A copy of the insurance policy covering the district for the lawsuit captioned in STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION ON CIVIL RIGHTS DOCKET NO.: P2023-900002; MATTHEW J. PLATKIN, Attorney General of New Jersey, and SUNDEEP IYER, Director of the New Jersey Division on Civil Rights, Complainants, v. HANOVER TOWNSHIP BOARD OF EDUCATION, and HANOVER TOWNSHIP PUBLIC SCHOOLS, Respondents.

- 2) A copy of the insurance policy covering the district for the lawsuit captioned in SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION, MORRIS COUNTY DOCKET NO.: MRS - 0042-23; MATTHEW J. PLATKIN, Attorney General of New Jersey, and SUNDEEP IYER, Director, New Jersey Division on Civil Rights, Plaintiffs,

v.

HANOVER TOWNSHIP BOARD OF EDUCATION,
and HANOVER TOWNSHIP PUBLIC SCHOOLS,
Defendants.

- 3) Documents from insurance company insuring the district in the policy referenced in items 1 and 2 indicating that the insurance company will be covering some or all of the attorney's fees incurred by the Hanover Township School District in the lawsuits or proceedings referenced in items 1 and 2, as indicated publicly by BOE attorney Giacobbe.
- 4) Copies of all Attorney bills submitted to the Hanover Township School District for the period of August 1, 2023 to date. Please note that these bills were not provided in response to any prior request to the district by this entity. Bills may be redacted as necessary.

With respect to items 1 and 2, enclosed please find 40 pages of records that the District identified as potentially responsive. Please note that redactions have been implemented to remove the insurance policy number pursuant to R. 1:38-7 (providing that insurance policy numbers constitute confidential personal identifiers).

With respect to item 3, please be advised that your request is overly broad, as it fails to identify with reasonable clarity any particular records sought. OPRA operates to make identifiable government records "readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1. New Jersey courts have consistently held that OPRA does not countenance open-ended searches of an agency's files. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); New Jersey Builders Ass'n v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div.), cert. denied, 190 N.J. 394 (2007). Consequently, a proper request under OPRA "must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents." See e.g., Spectraserv, Inc. v. Middlesex Cty. Utilities Auth., 416 N.J. Super. 565, 576 (App. Div. 2010); Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005). OPRA requests may not be a broad generic description of documents that require the custodian to search the agency's files and "analyze, compile, and collate" the requested information. Id.; see also Lagerkvist v. Office of Governor of State, 443 N.J. Super. 230, 237 (App. Div. 2015) (holding that OPRA does not convert a custodian into a researcher, which would have been the effect of the request). Here, your request is clearly deficient as it purportedly seeks documents "indicating the insurance company will be covering some or all of the attorney's fees incurred," and purports to require the District's records custodian to conduct research in order to determine which documents may potentially be relevant to your request. See Parreott v. Asbury Park School District, GRC Complaint Nos. 2016-20 & 2016-39 (Sept. 2017) (holding that the portion of the request seeking "all relevant documents" was invalid because it sought a class of various records and would have required the records custodian to conduct research in order to locate responsive records); see also Burke v. Ocean Cty., 2013 WL 6169154 (App. Div. 2013) (holding that an OPRA request is not the equivalent of law suit discovery). Accordingly, item 3 is invalid as it fails to comport with OPRA's specificity requirements.

Notwithstanding the invalidity of item 3 of your request, we note in the event that you subsequently submit a narrowly tailored request that communications between the District's representatives and its insurance carrier are exempt from public access. See N.J.S.A. 47:1A-1.1 (exempting "information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office" from the definition of a "government record").

With respect to item 4, enclosed please find 20 pages of records that the District identified as potentially responsive. Please be advised that the District redacted the invoices to remove information protected by attorney-client privilege and attorney work-product. OPRA specifically provides that certain records are deemed to be confidential, and thus are not encompassed within the definition of a "government record" under OPRA. This includes any record within the attorney-client privilege. See N.J.S.A. 47:1A-1.1. OPRA further specifies that while attorney bills are not fully exempt from public access, "such bills or invoices may be redacted to remove any information protected by the attorney-client privilege." Accordingly, the responsive records have been redacted to remove references to specific topics of legal research, legal strategies, and discussion/correspondence between the District's legal counsel and the District's representatives to ensure that confidential communications in the course of the lawyer-client relationship are not inadvertently revealed.

Please also note that the enclosed records contain personal identifying information of students. N.J.S.A. 47:1A-9(b) allows exemptions from disclosure for any grant of confidentiality established or recognized by the Constitution of this State, statute, court rule or judicial case law, to apply to OPRA. The Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232(g) and its supplemental regulations codified under 34 C.F.R. 99.30, precludes schools from disclosing student names and personal identifying information without obtaining consent. See also N.J.A.C. 6A:32-7.1 to -7.8. Accordingly, the invoices have also been redacted to remove identifiable student information.

Your OPRA request is now deemed answered and closed. Thank you for your attention to this matter.

Very truly yours,

Vanessa M. Wolsky

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