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Please respond to Livingston office

*Admitted to NJ & NY

April 27, 2023

Via E-mail

Concerned Livingston Residents

**RE: OPRA Request for electronic log of email information for elected officials
and Township employees from March 4, 2023 to April 5, 2023**

Dear Concerned Livingston Residents:

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. Specifically, your request seeks in "electronic format a log showing the sender, recipient, date, subject line, persons copied, and persons blind-copied for each email to or from the township elected officials and town employees [] for the period of March 4, 2023 to April 5, 2023." A record search has revealed 5854 records that might be responsive to your request. Such records may contain attorney-client, deliberative process privileges and/or exempt or non-responsive records, the documents will need to be reviewed by counsel.

In that regard, 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).

Even the decision cited by you in your request, Brooks v. Township of Tabernacle, (A-3769-20), the Court found that the record custodian may apply the Doe Factors to determine if the disclosure of the name and email address associated with any particular email is protected from disclosure pursuant to N.J.S.A. 47:1A-1. See also, Scheeler v. Off. of the Governor, 448 N.J. Super. 333, 348-49 (App. Div. 2017).

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).

In this case, given the number of records, we estimate that it will take 100 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 \$7,500.00. 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.

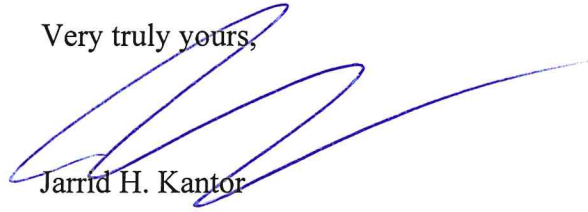
Id. 72-73, relying on N.J.S.A. 47:1A-5(g). As such, the time spent by counsel reviewing the email logs for privilege materials may be included in the Special Service Charge.

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

Concerned Livingston Residents
April 27, 2023
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If you have any questions or would like to discuss, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Jarrid H. Kantor

cc: Carolyn Mazzucco, Township Clerk
Barry Lewis, Township Manager.