

ATTACHMENT 1

EXHIBITS:

- Exhibit 1: March 10, 2008 OPRA Request.
- Exhibit 2: March 17, 2008 email response.
- Exhibit 3: Redacted invoices numbered 95354 and 94103.

CLAIMS:

This action has been brought because the Records Custodian of the Union County Improvement Authority (“UCIA”) has violated the Open Public Records Act (“OPRA”) by redacting nearly all of the information in law firm invoices for UCIA’s legal work and by not providing a specific, legal basis for doing so.

On March 10, 2008, the Union County Watchdog Association, acting through its President Tina Renna, requested certain legal bills from a UCIA law firm, DeCotiis, FitzPatrick, Cole & Wisler. (Exhibit 1). On March 17, 2008, the UCIA records custodian responded to the request, and provided two heavily redacted invoices. (Exhibits 2 and 3). Specifically, the “Date,” “Description,” and “Hours” fields were completely blotted out. Other information may have been blotted out too, but that is impossible to determine. In a rather obvious violation of OPRA, the Records Custodian did not say why the records were redacted, she merely stated that “You will note that information has been redacted.” (Exhibit 2).

Presumably, if the UCIA had given a specific, legal reason for its redactions, it would claim that such information was redacted pursuant to the attorney-client privilege exception in OPRA.

Only communications between a lawyer and client “in the course of the relationship and in professional confidence, are privileged[.]” *N.J.S.A. 2A:84A-20*. The privilege is limited to “those situations in which lawful legal advice is the object of the relationship.” *In re Gonnella*, 283 N.J. Super. 509, 512, 570 A.2d 53, 54 (Law Div. 1989). Therefore, not every communication between a lawyer and her client is privileged; rather, only those communications that are in confidence and where lawful legal advice is given.

Under New Jersey law, “the attorney-client privilege . . . does not apply to insulate billings from disclosure.” *Hunterdon County Policeman’s Benevolent Association Local 188 v. Township of Franklin*, 286 N.J. Super. 389, 394, 669 A.2d 299, 302 (App. Div. 1996) (affirming trial court’s holding that billing records are not privileged and are, therefore, accessible under former Right-to-Know law). Rather, legal fee invoices are only privileged if they reveal client secrets or would reveal strategy. Mundane statements that appear in typical invoices, such as “conference call with client” or “review and digest Smith deposition” are not privileged. “In the experience of this court, [attorney billings] will contain a few word description of the general category of the work performed, the number of hours required to

perform the work, the date of the performance, and the total cost to the client.” *Id.* (quoting lower court). In addition, no privilege would attach to the dates on which work occurred, who performed them, or the time spent on those tasks.

Therefore, the Records Custodian violated OPRA because she did not give a specific, legal basis for redacting the records she produced. In addition, assuming that the basis for the redaction is the attorney-client privilege, that privilege does not apply to legal billings unless they reveal client secrets or reveal legal advice or strategy. Therefore, we request that the GRC review the redacted documents *in camera* to determine whether the redactions were proper.

REQUESTED RELIEF:

An Order:

- (1) Finding that the Custodian denied access and violated OPRA by redacting information from responsive documents not subject to any privilege;
- (4) Ordering the Custodian to provide immediate access to all of the information that was improperly redacted from Exhibit 3;
- (5) Finding that the Union County Watchdog Association is a “prevailing party” and awarding a reasonable attorneys fee as provided by *N.J.S.A. 47:1A-6*;
- (6) If, after investigation, it is found that the Records Custodian knowingly and willfully violated OPRA, fining the Custodian for violating OPRA.

Dated: April 18, 2008

/s/ WALTER M. LUERS
Walter M. Luers, Member
Attorney for Complainant
Union County Watchdog Association
Law Offices of Walter M. Luers, LLC
105 Belvidere Avenue
P.O. Box 527
Oxford, New Jersey 07863
Phone: 908.453.2147
Fax: 908.453.2164
Email: wluers@luerslaw.com

EXHIBIT 1

UNION COUNTY IMPROVEMENT AUTHORITY
10 CHERRY STREET
ELIZABETH, NJ 07202

REQUEST FOR ACCESS TO GOVERNMENT RECORDS

FOR UCIA USE ONLY

Date Received: _____

Date of Response: _____

PLEASE SEE "DIRECTIONS AND PROCEDURES"



908-709-0530
Fax: 908-709-9209
Website: unioncountywatchdog.org
Email: tinarena@unioncountywatchdog.org
202 Walnut Avenue • Cranford, New Jersey 07016

Information Requested:

Copy of Minutes [specify board or entity, date, topic, or other identifying info.]

Copy of Ordinance or Resolution [specify date number, or other identifying info.]

Please provide the following in electronic format: _____

March 12, 2008 Agenda & Paid Bills List [as provided] _____

February 6, 2008 Minutes _____

Please prepare for on-site inspection the vouchers, Purchase Orders and bills for the following:

<input checked="" type="checkbox"/>	2/28/2008	General File	DeCotiis Fitzpatrick	Legal Services	36,095.30
<input checked="" type="checkbox"/>	2/28/2008	General File	DeCotiis Fitzpatrick	Legal Services	28,529.66

The Requestor, by signing below, hereby certifies that he or she has NOT been convicted of any indictable offense (felony) under the laws of this State, any other state, or the United States and is not seeking government records containing personal information pertaining the victim of a crime or the victim's family as provided by N.J.S.A. 47:1A-1 et seq..

The Requestor, by signing below, hereby acknowledges receipt of a copy of this form with the date on which the information is expected to be available and the estimated cost. This form, when signed by a County official shall constitute a receipt for any deposit received.

The information requested will be ready on: _____

Estimated Number of Pages: _____

Estimated Cost: _____

Deposit:

[required for anonymous requests, where the anticipated cost of reproduction exceeds \$5.00]

Requestor's Signature: _____

Date: 3/10/08

UCIA Official _____

Date: _____

EXHIBIT 2

>
>
> -----Original Message-----
> From: ucia@verizon.net [mailto:ucia@verizon.net]
> Sent: Monday, March 17, 2008 2:46 PM
> To: tinarenna@unioncountywatchdog.org
> Subject: OPRA Request dated March 10, 2008
>
> Dear Mrs. Renna:
>
> Enclosed as per your OPRA request of March 10, 2008 you will find attached
> the March 12, and the two DeCotiis Fitzpatrick bills for March 28th
> that you requested to view in our offices. You will note that information
> has been redacted.
>
> Sincerely,
>
> Jennifer Erdos
> UCIA
> 10 Cherry Street
> Elizabeth, NJ 07207
> 908-820-9710
>

EXHIBIT 3

DeCotiis, FitzPatrick, Cole & Wisler, LLP
Glenpointe Centre West
500 Frank W. Burr Blvd. Suite 31
Teaneck, NJ 07666
(201)-928-1100

Bill Date: 01/22/08
Invoice :95354

Fed ID #31-1425096

Union County Improvement Authority
10 Cherry Street
Elizabeth, NJ 07207

Re: Our file: 98-274 (Period Ending: 12/31/07)

LEGAL MATTER: General

BILL TO DATE

<u>Date</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
			\$780.00
			\$900.00
			\$960.00
			\$420.00
			\$185.00
			\$148.00
			\$37.00
			\$74.00

.60	\$111.00
.30	\$55.50
.20	\$37.00
.30	\$55.50
.40	\$74.00
.40	\$74.00
4.30	\$795.50
1.00	\$185.00
.60	\$111.00
2.00	\$370.00
1.00	\$185.00
.30	\$55.50
1.00	\$185.00
.20	\$37.00
.30	\$55.50
2.80	\$518.00
1.00	\$185.00
.60	\$111.00
.40	\$74.00
3.80	\$703.00
3.00	\$555.00
1.00	\$185.00
.80	\$148.00
.20	\$37.00
.80	\$148.00
.50	\$92.50
.40	\$74.00
.40	\$74.00
.30	\$55.50
.30	\$55.50
.50	\$92.50
.30	\$55.50
.30	\$55.50
3.80	\$703.00

2.00	\$370.00
.60	\$111.00
.20	\$37.00
.60	\$111.00
5.50	\$1,017.50
.30	\$55.50
.30	\$55.50
.80	\$148.00
.50	\$92.50
.60	\$111.00
.30	\$55.50
.50	\$92.50
.60	\$111.00
.40	\$74.00
.60	\$111.00
.30	\$55.50
.30	\$55.50
.30	\$55.50
.30	\$55.50
.30	\$55.50
.30	\$55.50
.70	\$129.50
.50	\$92.50
.60	\$111.00
.20	\$37.00
.60	\$111.00
.30	\$55.50
.30	\$55.50
.30	\$55.50
.80	\$148.00
.70	\$129.50
6.50	\$1,202.50
.50	\$92.50
.80	\$148.00
.20	\$37.00
4.50	\$832.50

1.00	\$185.00
.60	\$111.00
.30	\$55.50
.50	\$92.50
.40	\$74.00
.40	\$74.00
1.00	\$185.00
.30	\$55.50
.30	\$55.50
.30	\$55.50
.80	\$148.00
.60	\$111.00
.40	\$74.00
.60	\$111.00
.50	\$92.50
.60	\$111.00
.30	\$55.50
.30	\$55.50
1.00	\$185.00
.50	\$92.50
.30	\$55.50
.40	\$74.00
.40	\$74.00
.30	\$55.50
.40	\$74.00
.60	\$111.00
.30	\$55.50
3.00	\$555.00
4.50	\$832.50
2.00	\$370.00

2.50	\$462.50
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2.00	\$370.00
------	----------

3.50	\$647.50
------	----------

7.00	\$1,295.00
------	------------

2.00	\$370.00
------	----------

6.50	\$1,202.50
------	------------

2.00	\$370.00
------	----------

2.50	\$462.50
------	----------

3.00	\$555.00
------	----------

2.00	\$370.00
------	----------

2.00	\$370.00
------	----------

.20	\$37.00
-----	---------

.30	\$55.50
-----	---------

.30	\$55.50
-----	---------

.30	\$55.50
-----	---------

.20	\$37.00
-----	---------

.70	\$129.50
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DeCotiis, FitzPatrick, Cole & Wisler, LLP
Glenpointe Centre West
500 Frank W. Burr Blvd. Suite 31
Teaneck, NJ 07666

Bill Date: 01/22/08
Invoice :95354

Fed ID #31-1425096

Union County Improvement Authority
10 Cherry Street
Elizabeth, NJ 07207

Re: Our file: 98-274 (Period Ending: 12/31/07)

LEGAL MATTER: General

BILL TO DATE

Total this invoice: \$28,529.66

Total Amount Due:
\$28,529.66

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE

DeCotiis, FitzPatrick, Cole & Wisler, LLP
Glenpointe Centre West
500 Frank W. Burr Blvd. Suite 31
Teaneck, NJ 07663
(201)-928-1100

Bill Date: 12/10/07
Invoice :94103

Fed ID #31-1425096

Union County Improvement Authority
10 Cherry Street
Elizabeth, NJ 07207

Re: Our file: 98-274 (Period Ending: 11/30/07)

LEGAL MATTER: General

BILL TO DATE

<u>Hours</u>	<u>Amount</u>
2.50	\$462.50
1.50	\$277.50
1.50	\$277.50
4.00	\$660.00
.50	\$92.50
6.60	\$792.00

8.00	\$960.00
8.00	\$960.00
7.00	\$840.00
.40	\$74.00
.70	\$129.50
.40	\$74.00
.30	\$55.50
.40	\$74.00
.20	\$37.00
.30	\$55.50
.30	\$55.50
.20	\$37.00
.20	\$37.00
.20	\$37.00
.50	\$92.50
8.50	\$1,572.50
6.00	\$1,110.00
3.00	\$555.00
.30	\$55.50
8.50	\$1,572.50
.60	\$111.00
.80	\$148.00
.20	\$37.00
.90	\$166.50
.60	\$111.00
.20	\$37.00
.20	\$37.00

	3.90	\$721.50
	.30	\$55.50
	.30	\$55.50
	2.50	\$462.50
	3.90	\$721.50
	1.00	\$185.00
	3.50	\$647.50
	1.00	\$185.00
	.50	\$92.50
	.20	\$37.00
W	.80	\$148.00
	.30	\$55.50
	.30	\$55.50
	.70	\$129.50
	.30	\$55.50
	.40	\$74.00
	1.00	\$185.00
..	.30	\$55.50
	.30	\$55.50
	.70	\$129.50
	.30	\$55.50
at	.30	\$55.50
..	3.50	\$647.50
	.80	\$148.00
	.40	\$74.00
	.30	\$55.50
;	2.40	\$444.00
	.30	\$55.50
	.30	\$55.50

.70	\$129.50
1.00	\$185.00
.70	\$129.50
.50	\$92.50
.40	\$74.00
.40	\$74.00
.40	\$74.00
4.50	\$832.50
.80	\$148.00
.60	\$111.00
.40	\$74.00
2.50	\$462.50
.80	\$148.00
.40	\$74.00
.60	\$111.00
.40	\$74.00
.50	\$92.50
.40	\$74.00
.30	\$55.50
8.00	\$1,480.00
.40	\$74.00
8.00	\$1,480.00
.60	\$111.00
.20	\$37.00
.60	\$111.00
.30	\$55.50
.60	\$111.00
.30	\$55.50
6.50	\$1,202.50
.20	\$37.00
1.00	\$185.00
.40	\$74.00

.20	\$37.00
.60	\$111.00
.20	\$37.00
5.00	\$925.00
3.00	\$555.00
2.00	\$370.00
4.50	\$832.50
1.50	\$277.50
4.50	\$832.50
3.50	\$647.50
3.50	\$647.50
6.50	\$1,202.50
3.50	\$647.50
4.50	\$832.50
3.50	\$647.50
1.50	\$277.50
2.50	\$462.50
1.50	\$247.50

\$214.50

\$55.50

\$1,017.50

\$660.00

\$92.50

\$21,108.50

\$3,552.00

\$8,232.50

\$462.00

\$55.50

\$35,180.50

\$25.05

\$25.60

\$25.35

\$25.05

\$24.55

\$25.35

\$763.85

\$914.80

Total this invoice:

\$36,095.30

Total Amount Due:

=====
\$36,095.30

Thank you.

*****ALL INVOICES ARE DUE AND PAYABLE ON PRESENTMENT*****

DeCotiis, FitzPatrick, Cole & Wisler, LLP
Glenpointe Centre West
500 Frank W. Burr Blvd. Suite 31
Teaneck, NJ 07663

Bill Date: 12/10/07
Invoice :94103

Fed ID #31-1425096

Union County Improvement Authority
10 Cherry Street
Elizabeth, NJ 07207

Re: Our file: 98-274 (Period Ending: 11/30/07)

LEGAL MATTER: Genera.

BILL TO DATE

Total this invoice: \$36,095.30

Total Amount Due: =\$36,095.30

PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE