

CITY OF NEWARK



Cory A. Booker
Mayor

Anna P. Pereira
Corporation Counsel

Department of Law

July 19, 2011

Via Regular Mail and E-mail Correspondence [REDACTED]

Laura Baker
Secondary Parent Council
[REDACTED]
Newark, New Jersey [REDACTED]

Re: OPRA Request No. LAW-11-0002

Dear Ms. Baker:

The City of Newark ("City") is in receipt of your Open Public Records' Act request ("OPRA") wherein you request copies of all correspondence and memorandum and/or other documentation regarding the grant, donation, contribution, gift and/or pledge of \$100 million made by Facebook CEO Marc Zuckerberg ("\$100 Million Facebook Pledge") to support Newark Public Schools, which include emails to and/or from Mayor Cory Booker, his staff, and /or any employee of the City as well as all correspondence and email between Mayor Cory Booker, his staff, and any employee of the City with numerous listed individuals.

The City objects to your request on the grounds that it is overbroad and fails to identify with reasonable clarity the specific government records sought and because OPRA does not require custodians to research files to discern which records may be responsive to a request. A Custodian has no legal duty to conduct research to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in Bent v. Township of Stafford, 381 N.J. Super 30 (App. Div. 2005), MAG Entertainment, LLC v. Div. of Alcohol Beverages Control, 375 N.J. Super 534, 546 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council of Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007) and the Government Record Council's decision in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (March 2008). For the above stated reasons, your request is denied, unless you are able to identify with reasonable clarity the specific government records sought.

Notwithstanding the above objection, OPRA only requires the disclosure of records that were made in connection with the course of the Mayor's official duties. Any conversations and/or exchanges that may have taken place between Mayor Cory Booker

and Mark Zuckerberg or any other individual regarding the \$100 Million Facebook Pledge were not made in the course of the Mayor's official duties and are therefore exempt from disclosure under OPRA.

To the extent, however, and without waiving any objections to same, it is determined that Mayor Cory Booker was exercising his official duties as Mayor in any exchanges with Mr. Zuckerberg and/or any other individual regarding the \$100 Million Facebook Pledge the City further denies your request on the following grounds.

First and foremost, any communications including, but not limited to, correspondence, email, memoranda and/or other documentation, between Mayor Cory Booker and Mark Zuckerberg and the other identified individuals in your request are protected from disclosure under the well-established doctrine of executive privilege. N.J.S.A. 47:1A-9b. See also Nero v. Hyland, 76 N.J. 213, 255 (1978) (recognizing that a chief executive must be accorded a qualified power to protect the confidentiality of communications pertaining to the executive function).

Second, the text messages, correspondence, email, memoranda and/or other documentation all qualify as exceptions to OPRA under the official information privilege since the exchange of information between the Mayor and Mr. Zuckerberg as well as the other identified individuals in your request clearly enhances and/or enables the Mayor's ability to fulfill his statutory duties as the executive branch of City government. North Jersey Newspapers Co. v. Passaic County Bd. Of Chosen Freeholders, 127 N.J. 9, 17 (1992).

Finally, the information sought is also specifically exempt from OPRA under the deliberative privilege analysis. As N.J.S.A. 47:1A-1.1 provides, the terms [government record or record] shall not include inter-agency or intra-agency advisory, consultative, or deliberative material." Any communications between the Mayor of the City of Newark and Governor Chris Christie, Former Education Commissioner Bret Schundler, Former Acting Education Commissioner Rochelle Hendricks, Acting Education Commissioner Christopher Cerf, Members of the Newark City Council, Members of the New Jersey Legislature as well as the other identified individuals and/or entities in your request qualify as inter-agency advisory, consultative or deliberative material and are therefore exempt from OPRA.

Very truly yours,
Anna P. Pereira,
CORPORATION COUNSEL

By: 

Guenther Waldow, Esq.
Assistant Corporation Counsel

cc: Cheryl Coxson