



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

FINAL DECISION

March 25, 2009 Government Records Council Meeting

Tina Renna
(on behalf of the Union County Watchdog Association)
Complainant
v.
County of Union
Custodian of Record
Complaint No. 2008-110

At the March 25, 2009 public meeting, the Government Records Council (“Council”) considered the March 18, 2009 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. Because a completed version of the requested record did not exist in the medium requested at the time of the Complainant’s OPRA request and required medium conversion pursuant to N.J.S.A. 47:1A-5.d., and because the Custodian provided the Complainant access to the requested record in the medium requested immediately after the medium conversion was completed, the Custodian did not violate N.J.S.A. 47:1A-5.e.
2. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has not achieved “the desired result” because the complaint has not brought about a change (voluntary or otherwise) in the custodian’s conduct. *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus does not exist between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008).



This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 25th Day of March, 2009

Robin Berg Tabakin, Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Janice L. Kovach
Government Records Council

Decision Distribution Date: March 30, 2009

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 25, 2009 Council Meeting**

Tina Renna **GRC Complaint No. 2008-110**
(on behalf of the Union County Watchdog Association)¹
Complainant

v.

County of Union²
Custodian of Records

Records Relevant to Complaint: Electronic copy of the County's 2008 budget.³
Request Made: May 30, 2008
Response Made: May 30, 2008 and June 3, 2008
Custodian: Annie Croom
GRC Complaint Filed: June 16, 2008⁴

Background

May 30, 2008

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

May 30, 2008

Nicole DiRado's, Clerk of the Board of Chosen Freeholders, response to the OPRA request. The Clerk responds in writing to the Complainant's OPRA request on the same business day the Custodian received said request. The Clerk states that OPRA requires a response to an OPRA request within seven (7) business days from receipt of said request. The Clerk states that she will have a response to the Complainant's OPRA request by June 10, 2008, which would be the seventh (7th) business day following the Custodian's receipt of the Complainant's request.

June 3, 2008

E-mail from Marlena M. Russo, Information Assistant, to Complainant. The Information Assistant responds in writing to the Complainant's OPRA request on the

¹ Represented by Walter M. Luers, Esq., of Law Offices of Walter M. Luers, LLC (Oxford, NJ).

² Represented by Alexandra DeFresco, Esq., of the County of Union (Elizabeth, NJ).

³ The Complainant requested additional records, however, said records are not the subject of this Denial of Access Complaint.

⁴ The GRC received the Denial of Access Complaint on said date.

second (2nd) business day following receipt of said request. The Information Assistant states that she has attached an electronic copy of the requested 2008 budget to this e-mail.

June 16, 2008

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- Complainant’s OPRA request dated May 30, 2008
- Nicole DiRado’s, Clerk of the Board of Chosen Freeholders, response to the Complainant’s request dated May 30, 2008

The Complainant’s Counsel states that the Complainant attended a Union County Board of Chosen Freeholders meeting on May 29, 2008 and requested a hard copy of the 2008 budget, however, the County ran out of copies. As such, Counsel states that the Complainant submitted an OPRA request the next day, May 30, 2008, for an electronic copy of the 2008 budget. Counsel states that in response to the Complainant’s request, the Custodian indicated that she would provide the requested budget by June 10, 2008.

Counsel asserts that the Custodian did not provide the requested budget immediately because she provided the budget to the Complainant on the Tuesday after the Complainant’s request, June 3, 2008. Counsel contends that the Custodian violated N.J.S.A. 47:1A-5.e. by not providing the Complainant with the requested budget immediately. Counsel requests that the Council find that the Custodian violated OPRA and award the Complainant prevailing party attorney’s fees.

The Complainant did not agree to mediate this complaint.

July 8, 2008

Request for the Statement of Information sent to the Custodian.

July 14, 2008

Custodian’s Statement of Information (“SOI”) with the following attachments:

- Complainant’s OPRA request dated May 30, 2008
- Nicole DiRado’s, Clerk of the Board of Chosen Freeholders, response to the Complainant’s request dated May 30, 2008
- E-mail from Marlena M. Russo, Information Assistant, to Complainant dated June 3, 2008
- Certification of Melinda Zito, Deputy Comptroller, dated July 15, 2008
- Certification of Kathleen M. Villaggio, Bureau Chief of the County of Union’s Bureau of Data Processing and Telecommunications, dated July 15, 2008
- Certification of Marlena M. Russo, Information Assistant, dated July 16, 2008

Marlena M. Russo, Information Assistant, certifies that she received the Complainant’s OPRA request via facsimile on Friday, May 30, 2008 at approximately 4:10 pm. The Information Assistant certifies that on Tuesday, June 3, 2008 she was notified that an electronic copy of the 2008 budget was available. The Information

Assistant certifies that she provided the Complainant with a copy of said budget via e-mail the same day.

Melinda Zito, Deputy Comptroller, certifies that at the time of the Complainant's OPRA request, the 2008 budget was not available in electronic format. The Deputy Comptroller certifies that a hard copy of the 2008 budget was submitted to the County's print shop, which is operated by Xerox, on Monday, June 2, 2008 in order to convert the hard copy to electronic format. The Deputy Comptroller certifies that the finance department received the electronic copy of the 2008 budget from the print shop on Tuesday, June 3, 2008.

Kathleen Villaggio, Bureau Chief of the County of Union's Bureau of Data Processing and Telecommunications, certifies that she received an e-mail on June 3, 2008 from a Xerox representative who indicated that the electronic copy of the 2008 budget could not be e-mailed to the County because of the size of the document. The Bureau Chief certifies that the size of the electronic budget was approximately 23.6 megabytes and the County's e-mail server only allows files sized 10 megabytes or less to be sent via e-mail. The Bureau Chief certifies that she responded to the Xerox representative via e-mail on June 3, 2008 requesting that Xerox place the electronic copy of the 2008 budget on the County's U-Drive so that a County representative could retrieve it from the network. The Bureau Chief certifies that she received an e-mail from Xerox on June 3, 2008 indicating that the electronic budget could be accessed from the U-Drive.

Additionally, the Custodian certifies that she received the Complainant's OPRA request at approximately 4:10 pm on May 30, 2008. The Custodian states that after receiving said request, the County responded via e-mail with its standard acknowledgement letter acknowledging receipt of said request. The Custodian states that said acknowledgement letter indicates that a response will be provided to the Complainant within seven (7) business days and said response calculates the date on which the seven (7) business days expire.

The Custodian certifies that a hard copy of the budget was readily available, however, pursuant to OPRA, the County had to convert the hard copy to the medium requested, electronic format. The Custodian asserts that the electronic budget was immediately provided to the Complainant via e-mail once conversion was completed. The Custodian also certifies that no records responsive to the Complainant's request have been destroyed.

Also, the Custodian asserts that the Complainant's claim that the Custodian violated N.J.S.A. 47:1A-5.e. by not providing the requested budget immediately is baseless. Specifically, the Custodian states that pursuant to N.J.S.A. 47:1A-5.d., "[i]f the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium." The Custodian states that the Complainant sought access to an electronic copy of the 2008 budget, which the Custodian certifies was not available in the medium requested at the time of the Complainant's OPRA request. The Custodian contends that as soon as the requested budget was converted to the medium requested, the County provided immediate access to the Complainant.

The Custodian states that in Perez v. Borough of Glassboro, GRC Complaint No. 2006-79 (December 2006), the Council held that a budget provided to a requestor within three (3) business days was not an unlawful denial of immediate access. The Custodian states that in this instant complaint, the requested budget was provided to the Complainant in less time than in Perez, specifically within two (2) business days. The Custodian asserts that the actions taken by the County in converting the requested budget to electronic format and providing such to the Complainant within two (2) business days of receipt of the request demonstrate due diligence in immediately fulfilling the Complainant's request.

Further, the Custodian states that N.J.S.A. 47:1A-5.e. provides that immediate access ordinarily shall be granted to budgets. The Custodian contends that the statute is unclear as to how much time is allowed to pass before immediate access is denied. The Custodian asserts that the statute should be construed liberally to ensure that custodians are providing records in a timely fashion, but not in such a way as to impede normal operations of the agency. The Custodian contends that OPRA's immediate access provision was intended to have some flexibility to allow the public agencies to operate. The Custodian states that she received the Complainant's OPRA request on May 30, 2008 at approximately 4:10 pm. The Custodian asserts that it is unreasonable to claim that immediate access is denied when the requested record was not available in the medium requested at the time of the request. Also, the Custodian contends that the use of the word "ordinarily" intends to allow flexibility to address circumstances such as this one where the requested record is not readily available in the medium requested. The Custodian requests that the Council dismiss this complaint on all claims.

September 1, 2008

The Complainant Counsel's response to the Custodian's SOI. The Complainant's Counsel questions the certifications attached to the Custodian's SOI which indicate that the requested budget was not maintained in electronic format at the time of the Complainant's OPRA request. Counsel asserts that unless the 99 page budget was created on a typewriter, it must have been created in electronic format with a program that supports spreadsheet capabilities.

October 6, 2008

Certification of Melinda Zito, Deputy Comptroller. The Deputy Comptroller certifies that her job duties include coordinating the collection of budget information from the County's departments and preparing all other supporting documentation for the completion of the County's budget. The Deputy Comptroller certifies that at the time of the Complainant's OPRA request, a complete copy of the County's 2008 budget was not available in an electronic format. The Deputy Comptroller certifies that the County received an incomplete copy of the budget from the auditor, which the County printed to hard copy. The Deputy Comptroller certifies that additional documentation was added to the hard copy to create the completed 2008 budget. The Deputy Comptroller also certifies that on June 2, 2008 a complete hard copy of the budget was submitted to the County's print shop to convert the budget from a complete hard copy format to a complete electronic format. The Deputy Comptroller certifies that the finance department received a complete electronic copy of the budget on June 3, 2008.

Analysis

Whether the Custodian unlawfully denied access to the requested record??

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA states that:

“[a] custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency does not maintain the record in the medium requested, the custodian shall either convert the record to the medium requested or provide a copy in some other meaningful medium...” N.J.S.A. 47:1A-5.d.

OPRA also states that:

“[i]mmediate access ordinarily shall be granted to budgets...” N.J.S.A. 47:1A-5.e.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

Additionally, OPRA provides that custodian shall ordinarily provide immediate access to budgets. N.J.S.A. 47:1A-5.e. OPRA also provides that custodians must provide the requested record to the requestor in the medium requested. N.J.S.A. 47:1A-5.d.

In this complaint, the Complainant contends that the Custodian violated N.J.S.A. 47:1A-5.e. by not providing immediate access to the requested 2008 budget in electronic format. The Custodian certified that she received the Complainant's OPRA request at approximately 4:10 pm on Friday, May 30, 2008. The Deputy Comptroller certified that a complete copy of the 2008 budget did not exist in the medium requested, electronic format, at the time of the Complainant's OPRA request. Specifically, the Deputy Comptroller certified that the County received an incomplete copy of the budget electronically and added documentation to the hard copy to create the completed 2008 budget. As such, the Deputy Comptroller certified that in order to fulfill the Complainant's request in the medium requested, the County sent the complete hard copy of the 2008 budget to the County's print shop for medium conversion on Monday, June 2, 2008, the first business day following the County's receipt of the Complainant's OPRA request. Kathleen Villaggio, Bureau Chief of the County of Union's Bureau of Data Processing and Telecommunications, certified that she received an e-mail from the County's print shop on Tuesday, June 3, 2008, the second (2nd) business day following the Custodian's receipt of the Complainant's OPRA request, indicating that a complete copy of the 2008 budget was available in electronic format on the County's U-Drive. Marlena M. Russo, Information Assistant, certified that she provided the Complainant with a copy of the complete 2008 budget in electronic format via e-mail on June 3, 2008.

Additionally, the Custodian states that in Perez v. Borough of Glassboro, GRC Complaint No. 2006-79 (December 2006), the Council held that a budget provided to a requestor within three (3) business days was not an unlawful denial of access.

However, in Perez the Council initially concluded that:

“the Custodian provided access to the requested budget three (3) business days after receipt of the request. OPRA provides that ‘[i]mmediate access ordinarily shall be granted to budgets...’ N.J.S.A. 47:1A-5.e. The Custodian has not provided the GRC or the Complainant with any reason why the requested budget could not immediately be provided in response to this request. While the Custodian does indicate that she consulted with the Solicitor regarding the charge for these records, this is not a lawful basis for delaying access to the requested budget. Hence, *the Custodian violated N.J.S.A. 47:1A-5.e. in not providing immediate access to the requested budget.*” (Emphasis added).

Subsequently, in Perez the Custodian's Counsel attested to “the Custodian making the requested municipal budget available immediately to the Complainant for inspection in lieu of the Complainant paying for and receiving a copy of the requested budget.” As such, the Council's December 2006 Final Decision stated that based on the Custodian Counsel's statement, “the Custodian did not unlawfully deny immediate access to the requested budget as was previously determined by the Council.”

Thus, the Council's decision in Perez does not conclude that the Custodian did not violate N.J.S.A. 47:1A-5.e. because she provided the requested budget to the Complainant within three (3) business days; said decision concludes that because the Custodian made the requested budget available for *inspection* immediately following receipt of the request, the Custodian was not in violation of N.J.S.A. 47:1A-5.e.

OPRA's immediate access provision expressly states that immediate access shall *ordinarily* be granted to budgets. N.J.S.A. 47:1A-5.e. The use of the word "ordinarily" suggests that the legislature acknowledged that there would be certain circumstances in which budgets could not be released immediately.

Additionally, OPRA mandates that custodians convert requested records to the medium requested. N.J.S.A. 47:1A-5.d. In this instant complaint, the Deputy Comptroller certified that a complete copy of the requested budget did not exist in electronic format at the time of the Complainant's request. As such, the Custodian was required to convert the complete hard copy of the budget to the medium requested, electronic format, pursuant to N.J.S.A. 47:1A-5.d. The Custodian provided an electronic copy of the requested budget to the Complainant on the second (2nd) business day following receipt of the OPRA request for same.

In Rembis v. Clifton Board of Education, GRC Complaint No. 2006-186 (January 2007), the Complainant sought access to budgets and public employee salary information, which are immediate access records pursuant to N.J.S.A. 47:1A-5.e. The Custodian did not provide the Complainant with the requested records until approximately two (2) months following receipt of the Complainant's OPRA request. The Council held that the Custodian failed to provide immediate access to the requested records pursuant to N.J.S.A. 47:1A-5.e.

Further, in O'Loughlin v. Ocean Gate Board of Education, GRC Complaint No. 2005-43 (March 2006), the Complainant sought access to bills, which are also immediate access records pursuant to N.J.S.A. 47:1A-5.e. The Custodian did not provide the Complainant access to the requested bills until approximately one (1) month and three (3) months following receipt of the Complainant's OPRA request. The Council held that the Custodian violated N.J.S.A. 47:1A-5.e. by failing to provide immediate access to the requested bills.

Comparing the foregoing complaints to this instant matter, Rembis, *supra*, and O'Loughlin, *supra*, are distinguishable. In both Rembis and O'Loughlin, the Custodian did not provide the requested records until at least one (1) month after receiving the Complainant's OPRA request. Also in both Rembis and O'Loughlin, the Custodian failed to provide any valid basis for such a delay in providing immediate access to the requested records. Thus, in both Rembis and O'Loughlin, the Council concluded that the Custodian violated N.J.S.A. 47:1A-5.e. However, in this instant complaint, the Custodian provided the Complainant access to the requested budget within two (2) business days of receiving said request. Additionally, the Custodian in this instant matter, as well as other personnel involved in fulfilling said request, provided a valid basis for the time period in which the record was provided; the Deputy Comptroller certified that a complete copy of the requested budget did not exist electronically at the

time of the Complainant's request and therefore, the completed hard copy had to be converted to the medium requested.

Conversely, in Back v. Township of River Vale, GRC Complaint No. 2005-209 (January 2006), the Custodian initially denied access to the Complainant's OPRA request for contracts on the basis that her search concluded that no such contracts exist. However, the Custodian subsequently located a contract responsive to the request which had been misfiled and the Custodian provided the Complainant access to said contract on the same date it was located. The Council held that:

“[a]lthough contracts must ordinarily be disclosed immediately, the requested contract did not exist at the time of the request because it was misfiled. Immediate access was granted once the contract was discovered, and because the Custodian adhered to the intent of the statute, there is no violation of N.J.S.A. 47:1A-5.e.”

In this instant complaint, the Custodian certified that she received the Complainant's OPRA request at approximately 4:10 pm on Friday, May 30, 2008. The Deputy Comptroller certified that on Monday June 2, 2008, she submitted the hard copy of the requested budget to the County's print shop to be converted to the medium requested. Additionally, the Deputy Comptroller certified that she received the converted budget from the print shop on Tuesday June 3, 2008. The Information Assistant certified that she provided the Complainant with said record on the same date, Tuesday, June 3, 2008. Considering the Custodian received the Complainant's request essentially at the end of business on Friday, and that the requested record was submitted to the print shop for medium conversion on the next business day, and that the requested budget was provided to the Complainant in the medium requested on the same business day it was received from the print shop, pursuant to Back, supra, the Custodian adhered to the intent of the statute by fulfilling the Complainant's request as immediately as possible.

Therefore, because a completed version of the requested record did not exist in the medium requested at the time of the Complainant's OPRA request and required medium conversion pursuant to N.J.S.A. 47:1A-5.d., and because the Custodian provided the Complainant access to the requested record in the medium requested immediately after the medium conversion was completed, the Custodian did not violate N.J.S.A. 47:1A-5.e.

Whether the Complainant is a “prevailing party” pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable attorney's fees?

OPRA provides that:

“[a] person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:

- institute a proceeding to challenge the custodian's decision by filing an action in Superior Court...; or

- in lieu of filing an action in Superior Court, file a complaint with the Government Records Council...

A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6.

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the court held that a complainant is a "prevailing party" if he/she achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct. *Id.* at 432. Additionally, the court held that attorney's fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. *Id.*

In Teeters, the complainant appealed from a final decision of the Government Records Council which denied an award for attorney's fees incurred in seeking access to certain public records via two complaints she filed under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-6 and N.J.S.A. 47:1A-7.f., against the Division of Youth and Family Services ("DYFS"). The records sought involved an adoption agency having falsely advertised that it was licensed in New Jersey. DYFS eventually determined that the adoption agency violated the licensing rules and reported the results of its investigation to the complainant. The complainant received the records she requested upon entering into a settlement with DYFS. The court found that the complainant engaged in reasonable efforts to pursue her access rights to the records in question and sought attorney assistance only after her self-filed complaints and personal efforts were unavailing. *Id.* at 432. With that assistance, she achieved a favorable result that reflected an alteration of position and behavior on DYFS's part. *Id.* As a result, the complainant was a prevailing party entitled to an award of a reasonable attorney's fee. Accordingly, the Court remanded the determination of reasonable attorney's fees to the GRC for adjudication.

Additionally, the New Jersey Supreme Court has ruled on the issue of "prevailing party" attorney's fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), the court discussed the catalyst theory, "which posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct." Mason, supra, at 71, (quoting Buckhannon Board & Care Home v. West Virginia Department of Health & Human Resources, 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). The court in Buckhannon stated that the phrase "prevailing party" is a legal term of art that refers to a "party in whose favor a judgment is rendered." (quoting Black's Law Dictionary 1145 (7th ed. 1999)). The court in Mason, supra, at 76, held that "requestors are entitled to attorney's fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) 'a factual causal nexus between plaintiff's litigation and the relief ultimately achieved'; and (2) 'that the relief ultimately secured by plaintiffs had a basis in law.' Singer v. State, 95 N.J. 487, 495, cert denied (1984)."

In this instant complaint, the Custodian sought a finding from the Council that the Custodian violated N.J.S.A. 47:1A-5.e. by failing to provide immediate access to the

requested budget. However, as stated above, the Custodian did not violate N.J.S.A. 47:1A-5.e. because she provided the Complainant with immediate access to the requested record once said record was converted to the medium requested pursuant to N.J.S.A. 47:1A-5.d.

Pursuant to Teeters, supra, the Complainant has not achieved “the desired result” because the complaint has not brought about a change (voluntary or otherwise) in the custodian’s conduct. *Id.* at 432. Additionally, pursuant to Mason, supra, a factual casual nexus does not exist between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee pursuant to N.J.S.A. 47:1A-6, Teeters, supra, and Mason, supra.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because a completed version of the requested record did not exist in the medium requested at the time of the Complainant’s OPRA request and required medium conversion pursuant to N.J.S.A. 47:1A-5.d., and because the Custodian provided the Complainant access to the requested record in the medium requested immediately after the medium conversion was completed, the Custodian did not violate N.J.S.A. 47:1A-5.e.
2. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has not achieved “the desired result” because the complaint has not brought about a change (voluntary or otherwise) in the custodian’s conduct. *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual casual nexus does not exist between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee pursuant to N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008).

Prepared By: Dara Lownie
Senior Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

March 18, 2009