



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**FINAL DECISION**

**August 27, 2013 Government Records Council Meeting**

Jesse Wolosky  
Complainant

Complaint No. 2010-225

v.

Town of Morristown (Morris)  
Custodian of Record

At the August 27, 2013 public meeting, the Government Records Council ("Council") considered the August 20, 2013 Supplemental 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 this complaint be dismissed since the Complainant (via Counsel) withdrew his complaint in a letter to the Honorable Michael Antoniewicz, Administrative Law Judge, dated August 8, 2013, because the parties agreed to settle the matter. Therefore, no further adjudication is required.

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 27th Day of August, 2013

Robin Berg Tabakin, Esq., Chair  
Government Records Council



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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: August 29, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
August 27, 2013 Council Meeting**

**Jesse Wolosky<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-225**

v.

**Town of Morristown (Morris)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

1. Approved minutes of each and every closed or executive session held by the governing body during January, February, March, and April 2010.
2. A copy of the Town of Morristown's ("Town") current OPRA request form.

**Custodian of Record:** Matthew Stechauner

**Request Received by Custodian:** June 29, 2010

**Response Made by Custodian:** July 9, 2010

**GRC Complaint Received:** August 21, 2010

**Background**

May 29, 2012 Council Meeting:

At its May 29, 2012 public meeting, the Council considered the May 22, 2012 Supplemental 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, found that:

1. The Custodian provided the Council with certified confirmation of compliance on April 5, 2012, one (1) business day following the distribution of the Council's Interim Order. The Custodian certified that the Town amended the official OPRA request form by including information that instructs a requestor that an agency's denial of access to government records may be challenged by either instituting a proceeding in the Superior Court of New Jersey or filing a complaint with the Government Records Council and also including a section that details the exceptions regarding personnel file requests listed in N.J.S.A. 47:1A-10. Accordingly, the Custodian has complied with the Council's March 20, 2012 Interim Order.

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<sup>1</sup> Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

<sup>2</sup> Represented by Vijayant Pawar, Esq. (Morristown, NJ).

2. The Custodian initially unlawfully denied the Complainant access to the requested minutes and was using an official OPRA request form that did not comport with OPRA because it (a) failed to state that requestors have a right to challenge a denial of access to Superior Court or to the Government Records Council and (b) stated that "employee personnel files" were not public records, but did not state OPRA's exceptions to the general rule that personnel files are not public records. However, the Custodian provided the Complainant with copies of the requested minutes on September 2, 2010 and provided certified confirmation of compliance with the Council's Order to the GRC on April 5, 2012. Accordingly, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint 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 exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters and Mason. Thus, this Complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. Based on the New Jersey Supreme Court's decision in New Jerseyans for a Death Penalty Moratorium v. NJ Department of Corrections, 185 N.J. 137, 156-158 (2005) and the Council's decisions in Wolosky v. Township of Sparta (Sussex), GRC Complaint Nos. 2008-219 and 2008-277 (November 2011), an enhancement of the lodestar fee is not appropriate in this matter because the facts of this case do not rise to a level of "unusual circumstances ...justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

#### Procedural History:

On May 30, 2012, the Council distributed its Interim Order to all parties. On October 26, 2012, the complaint was transmitted to the Office of Administrative Law ("OAL"). On August 8, 2013, the Complainant's Counsel sent a letter to the Honorable Michael Antoniewicz, Administrative Law Judge, withdrawing this complaint because the parties agreed to settle the matter.

#### Analysis

No analysis required.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that this complaint be dismissed since the Complainant (via Counsel) withdrew his complaint in a letter to the Honorable Michael Antoniewicz, Administrative Law Judge, dated August 8, 2013, because the parties agreed to settle the matter. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Brandon D. Minde, Esq.  
Executive Director

August 20, 2013