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
*Acting Commissioner*

**FINAL DECISION**

**February 28, 2012 Government Records Council Meeting**

Jesse Wolosky
Complainant
v.
Borough of Mt. Arlington (Morris)
Custodian of Record

Complaint No. 2010-270

At the February 28, 2012 public meeting, the Government Records Council ("Council") considered the February 21, 2012 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. The Custodian did not unlawfully deny access to the requested records when she redacted the telephone numbers contained in the first 50 OPRA requests made to the records Custodian from January 1, 2010 through August 25, 2010 pursuant to N.J.S.A. 47:1A-5.a and Smith v. Department of Corrections, GRC Complaint No. 2004-163 (June 2005).

2. Because the Complainant's claim that the posting of unredacted OPRA requests on the Borough's website is a move intended to harass and deter requestors does not involve a denial of access to government records under OPRA, the GRC has no jurisdiction to adjudicate this issue pursuant to N.J.S.A.47:1A-7.b..

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Additionally, absent a violation of OPRA, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. *See* Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 73-76 (2008). 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, and Mason.

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 28th Day of February, 2012

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Denise Parkinson Vetti, Esq., Secretary
Government Records Council

**Decision Distribution Date: March 2, 2012**

**STATE OF NEW JERSEY**
**GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director**
**February 28, 2012 Council Meeting**

**Jesse Wolosky**[1] **GRC Complaint No. 2010-270**
**Complainant**

**v.**

**Borough of Mt. Arlington (Morris)**[2]
**Custodian of Records**

**Records Relevant to Complaint:**
1. A copy of the OPRA log sheets from January 1, 2010 through August 25, 2010.
2. A copy of the first 50 OPRA requests made to the records Custodian from January 1, 2010 through August 25, 2010, excluding OPRA requests made by Jesse Wolosky.

**Request Made:** August 25, 2010
**Response Made:** September 2, 2010
**Custodian:** Tina M. Mayer
**GRC Complaint Filed:** October 15, 2010[3]

## Background

**August 25, 2010**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above in an e-mail referencing OPRA. The Complainant indicates that the preferred method of delivery is e-mail and that the records be placed in chronological order in two (2) PDF files.

**September 2, 2010**

Custodian's response to the OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the fifth (5th) business day following receipt of such request. The Custodian states that attached to this e-mail are the records responsive to the Complainant's request. The Custodian asserts that the OPRA log will also contain a portion of requests from 2009. The Custodian states that the OPRA request forms have been redacted to remove telephone numbers contained therein pursuant to N.J.S.A. 47:1A-1.

**October 15, 2010**

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

[1] Represented by Walter Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).
[2] Represented by Levi Kool, Esq., of O'Donnell McCord, P.C. (Morristown, NJ).
[3] The GRC received the Denial of Access Complaint on said date.

- Complainant's OPRA request dated August 25, 2010
- Custodian's response to the OPRA request dated September 2, 2010
- A copy of Mount Arlington's OPRA log
- Copies of redacted OPRA requests received from Mount Arlington[4]

The Complainant's Counsel states that the Borough has a policy of selectively publishing OPRA requests on its website. Counsel asserts that the OPRA log and OPRA requests that the Custodian provided to the Complainant contain redactions of telephone numbers. Counsel maintains that the telephone numbers redacted belong to primarily commercial enterprises.

Counsel argues that the Borough redacted the commercial telephone numbers contained in the requested OPRA request forms based upon N.J.S.A. 47:1A-1.1 which exempts unlisted telephone numbers of "persons" from being disclosed. Counsel states that while the GRC has interpreted this section of OPRA to mean any person's telephone number, this exception does not apply to corporate or business telephone numbers. Counsel asserts that there is no privacy interest in a business or corporate telephone number. Counsel states that corporate and business telephone numbers are routinely placed on letterheads and websites and that these entities want their telephone numbers made public so that they may be contacted by the public.

Counsel states that in addition to the illegal redaction of corporate and business telephone numbers from the requested records, Counsel maintains that the Borough has been publishing OPRA requests on its website that contain the telephone numbers of citizens. Counsel states that he believes this is an effort of the Borough to punish requestors by posting their information on the Borough's website.

Counsel requests that the GRC order the Custodian to disclose in unredacted form all of the responsive OPRA requests that originate from commercial entities. In addition, Counsel requests that the GRC find the Complainant to be a prevailing party pursuant to N.J.S.A. 47:1A-6 and award him a reasonable attorney's fee.

The Complainant does not agree to mediate this complaint.

**November 10, 2010**

Request for the Statement of Information ("SOI") sent to the Custodian.

**November 30, 2010**

Custodian's SOI with the following attachments:

- Complainant's OPRA request dated August 25, 2010
- Custodian's response to the OPRA request dated September 2, 2010

The Custodian certifies that she searched for and disclosed all of the records responsive to the Complainant's request. The Custodian certifies that the requested

[4] Additional correspondence was also attached that is not relevant to the adjudication of this complaint.

records have a six (6) year retention schedule and that none of the responsive records have been destroyed.

The Custodian states that the Complainant has failed to acknowledge that some of the telephone numbers provided on OPRA request forms could be mobile telephone numbers and unlisted telephone numbers related to businesses that are not meant for public consumption. The Custodian asserts that the Complainant has made a general assumption that the telephone numbers that have been redacted from the disclosed records are related to businesses and corporations and are not subject to redaction. The Custodian states that such an assumption is incorrect and the Complainant has failed to acknowledge that such numbers may be home telephone numbers, mobile numbers, or unlisted business numbers. The Custodian maintains that if the Complainant wanted the telephone numbers of businesses who have made OPRA requests to the Borough, the Complainant could have requested such.

Counsel argues that the Custodian is making a good faith effort to ensure the legitimate privacy concerns and protection of the personal information of requestors is balanced with the public's interest in accordance with Burnett v. County of Bergen, 198 N.J. 408 (2009). Counsel maintains that there is no reasonably practical method to cull out listed telephone numbers from unlisted telephone numbers on OPRA request forms, as there is no indicator of the status of the telephone numbers contained within them. Counsel argues that the Custodian has no way to discern whether the telephone number supplied by any requestor is a business, home, personal, mobile, listed, or unlisted telephone number.

Counsel argues that the Custodian redacted the telephone numbers from the requested records pursuant to N.J.S.A. 47:1A-1.1, which exempts unlisted telephone numbers of "persons" from being disclosed. Counsel asserts that this is similar to Gannett N.J. Partners v. County of Middlesex, 379 N.J. Super. 205 (App. Div. 2005) which held that OPRA does not require disclosure of telephone billing records that detail numbers called by a public employee. Counsel states that the Custodian has to call the telephone numbers on OPRA request forms to facilitate the fulfillment of requests, and by not redacting the telephone numbers from the records disclosed to the Complainant, the Custodian would have been providing telephone numbers being called by a public employee (the Custodian) in violation of Gannett.

Counsel further disputes the Complainant's allegation that the publishing of OPRA requests on the town's website is a form of punishment for requestors and contends that this argument is false and without merit. Counsel states that the publishing of OPRA requests on the town's websites is an issue that is not within the GRC's jurisdiction and responsibilities and that any posted requests that were uploaded unredacted is a purely clerical error that has since been corrected.

Counsel maintains that the Complainant is not a prevailing party and accordingly, should not be awarded an attorney's fee.

## Analysis

**Whether the Custodian unlawfully denied access to the requested records?**

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.

Furthermore, OPRA mandates that the GRC:

- receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian;

- issue advisory opinions, on its own initiative, as to whether a particular type of record is a government record which is accessible to the public… N.J.S.A. 47:1A-7.b.

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.

In addition, OPRA provides that:

> "[p]rior to allowing access to any government record, the custodian thereof shall redact from that record any information which discloses the social security number, credit card number, unlisted telephone number, or driver license number of any person; except for:

- use by any government agency, including any court or law enforcement agency, in carrying out its functions,
- or any private person or entity acting on behalf thereof,
- or any private person or entity seeking to enforce payment of court-ordered child support…" N.J.S.A. 47:1A-5.a.

In this case, the Complainant requested the first fifty (50) OPRA request forms filed with the Borough in 2010 and the OPRA request log. The Custodian timely provided the requested records with redactions to protect telephone numbers contained in the requested records. The Complainant alleged that the redaction of the telephone numbers from the requested records constitutes a denial of access because some of the OPRA request forms were filed by commercial and business entities and that no privacy interest attaches to commercial telephone numbers.

Conversely, the Custodian asserted that the Complainant merely assumes that the telephone numbers listed on those OPRA requests filed by businesses are listed and public telephone numbers. The Custodian argues that the Complainant is ignoring the possibility that businesses may be listing private, personal, home, or mobile telephone numbers on OPRA request forms. Furthermore, the Custodian states that there is no way to discern whether the telephone numbers listed on OPRA request forms are listed or unlisted and that it is the Custodian's role to err on the side of protecting the privacy interests of requestors as it relates to their personal information.

OPRA not only permits the redaction of unlisted telephone numbers, it places an affirmative duty on a custodian to maintain the confidentiality of a person's unlisted telephone number by providing that "[a] government record shall not include…[an] unlisted telephone number." N.J.S.A. 47:1A-1.1. A custodian therefore is required to redact an unlisted telephone number from any record disclosed pursuant to N.J.S.A. 47:1A-5.a.

The Council, however, has long recognized the impracticality of this requirement. In Smith v. Department of Corrections, GRC Complaint No. 2004-163 (June 2005), the Council held that the complaint filed for denial of access to telephone records should be dismissed, in part, because the custodian could not safeguard unlisted telephone numbers from disclosure. In Smith, the Council determined that:

> "…there is the practical problem with OPRA's mandate that prior to allowing access to any government record, the custodian must redact from that record any information which discloses the unlisted phone numbers of any person. N.J.S.A. 47:1A-5.a. It is not likely that any custodian could comply with this OPRA provision by making such redactions with accurate precision when there is a realistic chance that the custodian may miss just one unlisted telephone number…[f]rom a practical standpoint, there may be no way for a custodian to ensure

that all unlisted numbers have been redacted…"[5]

Accordingly, a custodian does not have a duty to determine what telephone numbers are unlisted and what telephone numbers are listed pursuant to Smith v. Department of Corrections, GRC Complaint No. 2004-163 (June 2005). Instead, the custodian's lawful responsibility is to ensure that the privacy concerns of requestors are protected in accordance with N.J.S.A. 47:1A-5.a.

In the matter before the Council, the Custodian redacted telephone numbers from the requested records prior to disclosing such records to the Complainant. Pursuant to N.J.S.A. 47:1A-5.a. and the Council's determination in Smith, the Custodian's actions in so doing are not an unlawful denial of access under OPRA.

Therefore, the Custodian did not unlawfully deny access to the requested records when she redacted the telephone numbers contained in the first 50 OPRA requests made to the records Custodian from January 1, 2010 through August 25, 2010 pursuant to N.J.S.A. 47:1A-5.a. and Smith, *supra*.

Furthermore, while the GRC observes that the Complainant contends that the posting of unredacted OPRA requests on the Borough's website is a move intended to harass and deter requestors, the GRC has no jurisdiction over such a claim pursuant to N.J.S.A.47:1A-7.b., because this claim does not involve a denial of access to government records under OPRA.

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

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. 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

[5] *See, e.g.*, Bart v. Passaic County Public Housing Agency, GRC Complaint No. 2007-266 (Interim Order February 2008) (holding that the Custodian properly redacted telephone numbers from the records requested).

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)). In Buckhannon, the Supreme Court 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 Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because "[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties." *Id.* at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863, but also over concern that the catalyst theory would spawn extra litigation over attorney's fees. *Id.* at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

As the New Jersey Supreme Court noted in Mason, Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, supra, 387 N.J. Super. at 429; see, e.g., Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the Federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). "But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes." 196 N.J. at 73 (citations omitted).

The Mason Court then examined the catalyst theory within the context of New Jersey law, stating that:

"New Jersey law has long recognized the catalyst theory. In 1984, this Court considered the term "prevailing party" within the meaning of the federal Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C.A. § 1988. Singer v. State, 95 N.J. 487, 495, cert. denied, New Jersey v. Singer, 469 U.S. 832, 105 S. Ct. 121, 83 L. Ed. 2d 64 (1984). The Court adopted a two-part test espousing the catalyst theory, consistent with federal law at the time: (1) there must be "a factual causal nexus between plaintiff's litigation and the relief ultimately achieved;" in other words, plaintiff's efforts must be a "necessary and important factor in obtaining the relief," Id. at 494-95, 472 A.2d 138 (internal quotations and citations omitted); and (2) "it must be shown that the relief ultimately secured by plaintiffs had a basis in law," Id. at 495. See also North Bergen Rex Transport v. TLC, 158 N.J. 561, 570-71 (1999) (applying Singer fee-shifting test to commercial contract).

Also prior to Buckhannon, the Appellate Division applied the catalyst doctrine in the context of the Law Against Discrimination, N.J.S.A. 10:5-1 to -49, and the Americans with Disabilities Act, 42 U.S.C.A. §§ 12101-12213. Warrington v. Vill. Supermarket, Inc., 328 N.J. Super. 410 (App. Div. 2000). The Appellate Division explained that "[a] plaintiff is considered a prevailing party 'when actual relief on the merits of [the] claim materially alters the relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.'" *Id.* at 420 (quoting Farrar v. Hobby, 506 U.S. 103, 111-12, 113 S. Ct. 566, 573, 121 L. Ed. 2d 494, 503 (1992)); see also Szczepanski v. Newcomb Med. Ctr., 141 N.J. 346, 355 (1995) (noting that Hensley v. Eckerhart "generously" defines "a prevailing party [a]s one who succeeds 'on any significant issue in litigation [that] achieves some of the benefit the parties sought in bringing suit'" (quoting Hensley v. Eckerhart, 461 U.S. 424, 433, 103 S. Ct. 1933, 1938, 76 L. Ed. 2d 40, 50 (1983))). The panel noted that the "form of the judgment is not entitled to conclusive weight"; rather, courts must look to whether a plaintiff's lawsuit acted as a catalyst that prompted defendant to take action and correct an unlawful practice. Warrington, supra, 328 N.J. Super. at 421. A settlement that confers the relief sought may still entitle plaintiff to attorney's fees in fee-shifting matters. *Id.* at 422.

This Court affirmed the catalyst theory again in 2001 when it applied the test to an attorney misconduct matter. Packard-Bamberger, supra, 167 N.J. at 444. In an OPRA matter several years later, New Jerseyans for a Death Penalty Moratorium v. New Jersey Department of Corrections, 185 N.J. 137, 143-44 (2005)(NJDPM), this Court directed the Department of Corrections to disclose records beyond those it had produced voluntarily. In ordering attorney's fees, the Court acknowledged the rationale underlying various fee-shifting statutes: to insure that plaintiffs are able to find lawyers to represent them; to attract competent counsel to seek redress of statutory rights; and to "even the fight" when citizens challenge a public entity. *Id.* at 153.

> After Buckhannon, and after the trial court's decision in this case, the Appellate Division decided Teeters. The plaintiff in Teeters requested records from the Division of Youth and Family Services (DYFS), which DYFS declined to release. 387 N.J. Super. at 424. After the GRC preliminarily found in plaintiff's favor, the parties reached a settlement agreement leaving open whether plaintiff was a "prevailing party" under OPRA. *Id.* at 426-27.
>
> The Appellate Division declined to follow Buckhannon and held that plaintiff was a "prevailing party" entitled to reasonable attorney's fees; in line with the catalyst theory, plaintiff's complaint brought about an alteration in DYFS's position, and she received a favorable result through the settlement reached. *Id.* at 431-34. In rejecting Buckhannon, the panel noted that "New Jersey statutes have a different tone and flavor" than federal fee-shifting laws. *Id.* at 430. "Both the language of our statutes and the terms of court decisions in this State dealing with the issue of counsel fee entitlements support a more indulgent view of petitioner's claim for an attorney's fee award than was allowed by the majority in Buckhannon ..." *Id.* at 431, 904 A.2d 747. As support for this proposition, the panel surveyed OPRA, Packard-Bamberger, Warrington, and other cases.
>
> OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that "[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6. Under the prior RTKL, "[a] plaintiff in whose favor such an order [requiring access to public records] issues ... may be awarded a reasonable attorney's fee not to exceed $ 500.00." N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the $500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA." (Footnote omitted.) Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 73-76 (2008).

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 the instant matter the Council has concluded that the Custodian did not unlawfully deny access to the requested OPRA request forms when she redacted the telephone numbers from such forms prior to providing same to the Complainant. Thus, pursuant to Teeters, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Additionally, absent a violation of OPRA, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief

ultimately achieved. *See* Mason. 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, and Mason.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the requested records when she redacted the telephone numbers contained in the first 50 OPRA requests made to the records Custodian from January 1, 2010 through August 25, 2010 pursuant to N.J.S.A. 47:1A-5.a and Smith v. Department of Corrections, GRC Complaint No. 2004-163 (June 2005).

2. Because the Complainant's claim that the posting of unredacted OPRA requests on the Borough's website is a move intended to harass and deter requestors does not involve a denial of access to government records under OPRA, the GRC has no jurisdiction to adjudicate this issue pursuant to N.J.S.A.47:1A-7.b..

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Additionally, absent a violation of OPRA, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. *See* Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 73-76 (2008). 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, and Mason.

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

February 21, 2012