



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

June 26, 2018 Government Records Council Meeting

Shawn G. Hopkins
Complainant

Complaint No. 2014-32

v.

Township of Holmdel (Monmouth)
Custodian of Record

At the June 26, 2018 public meeting, the Government Records Council (“Council”) considered the June 19, 2018 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 the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant’s Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. 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 26th Day of June, 2018

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: June 29, 2018



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Prevailing Party Attorney's Fees
**Supplemental Findings and Recommendations of the Council Staff
June 26, 2018 Council Meeting**

**Shawn G. Hopkins¹
Complainant**

GRC Complaint No. 2014-32

v.

**Township of Holmdel (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the computer assisted mass appraisal (“CAMA”) data for the Township of Holmdel (“Township”) including property photographs.

Custodian of Record: Maureen Doloughy

Request Received by Custodian: January 19, 2014

Response Made by Custodian: January 21, 2014

GRC Complaint Received: January 21, 2014

Background

May 22, 2018 Council Meeting:

At its May 22, 2018 public meeting, the Council considered the May 15, 2018 Findings and Recommendations of the Council Staff 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 unlawfully denied access to the Complainant’s OPRA request seeking CAMA data on the basis that same was invalid. N.J.S.A. 47:1A-6. Specifically, the Custodian was required to query a database and extract the responsive data: such an action does not amount to creating a new record. Zahler v. Ocean Cnty. Coll., GRC Complaint No. 2013-266 (Interim Order dated July 29, 2014). For that reason, the Complainant’s OPRA request seeking CAMA data is valid. See also Paff v. Twp. of Galloway, 229 N.J. 340 (2017); McBride v. City of Camden (Camden), GRC Complaint No. 2014-54 (Interim Order dated September 30, 2014). Further, the portion of the OPRA request seeking photographs reasonably identified a type of responsive

¹ Represented by Richard Gutman, Esq. (Montclair, NJ).

² Represented by Michael L. Collins, Esq. of Archer & Greiner, P.C. Previously represented by Christopher D. Ackerman, Esq., of Dilworth, Paxson, LLP (Red Bank, NJ).

record associated with the CAMA data. Such an action would not require an open-ended search of all Township files.

2. The Custodian did not bear her burden of proving that she lawfully denied access to the responsive CAMA data. N.J.S.A. 47:1A-6. Specifically, the evidence of record supports that the County maintained the data on behalf of the Township based on a shared services agreement. The Custodian had an affirmative obligation to obtain said data and provide it to the Complainant in accordance with prevailing case law but failed to do so. Burnett v. Cnty. of Gloucester 415 N.J. Super. 506 (App. Div. 2010); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). Further, the responsive data does not fall within the ACD exemption. See Hopkins v. Monmouth Cnty. Bd. of Taxation, et al., GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). However, the GRC declines to order disclosure because the Custodian, through Counsel, provided the responsive CAMA data to the Complainant on April 18, 2018
3. The Custodian unlawfully denied access to the responsive property photographs. N.J.S.A. 47:1A-6. Specifically, the records do not fall within the exemptions cited by the Township. Further, the Complainant's Counsel negated any privacy or security arguments by stating that the Complainant was not seeking any interior photographs. However, the GRC declines to order disclosure of the responsive photographs because the Custodian, through Counsel, did so on April 25, 2018.
4. Although the Custodian unlawfully denied access to the responsive records, she ultimately disclosed them through Custodian's Counsel on April 18, and 25, 2018 respectively. Additionally, 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, 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.
5. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Custodian, through Counsel, disclosed responsive records to the Complainant on April 18, and 25, 2018, respectively. Additionally, the Township's "eleventh hour" disclosure resulted in a voluntary change in the Custodian's conduct. Id. at 75-76. 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. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on**

the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.

Procedural History:

On May 24, 2018, the Council distributed its Interim Order to all parties. On June 8, 2018, Custodian's Counsel confirmed via e-mail, which was copied to Complainant's Counsel, that the fee issue was amicably resolved. Custodian's Counsel attached to his e-mail as evidence of the agreement a purchase order executed by Complainant's Counsel and Township officials.

Analysis

Prevailing Party Attorney's Fees

At its May 22, 2018 meeting, the Council determined that the Complainant was a prevailing party entitled to an award of reasonable attorney's fees. The Council thus ordered that the "parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days." The Council further ordered that the parties notify of any settlement prior to the expiration of the twenty (20) business day time frame. Finally, the Council ordered that, should the parties not reach an agreement, the Complainant's Counsel would be required to "submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13."

On May 24, 2018, the Council distributed its Interim Order to all parties; thus, the Custodian's response was due by close of business on June 22, 2018. On June 8, 2018, Custodian's Counsel e-mailed the Government Records Council attaching an executed purchase order. Therein, Counsel confirmed that the fee issue was amicably resolved, as evidenced by the purchase order.

Accordingly, the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant's Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Conclusions and Recommendations

The Council Staff respectfully recommends that the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant's Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Communications Specialist/Resource Manager

June 19, 2018



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

May 22, 2018 Government Records Council Meeting

Shawn G. Hopkins
Complainant

Complaint No. 2014-32

v.

Township of Holmdel (Monmouth)
Custodian of Record

At the May 22, 2018 public meeting, the Government Records Council (“Council”) considered the May 15, 2018 Findings and Recommendations of the Council Staff 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 unlawfully denied access to the Complainant’s OPRA request seeking CAMA data on the basis that same was invalid. N.J.S.A. 47:1A-6. Specifically, the Custodian was required to query a database and extract the responsive data: such an action does not amount to creating a new record. Zahler v. Ocean Cnty. Coll., GRC Complaint No. 2013-266 (Interim Order dated July 29, 2014). For that reason, the Complainant’s OPRA request seeking CAMA data is valid. See also Paff v. Twp. of Galloway, 229 N.J. 340 (2017); McBride v. City of Camden (Camden), GRC Complaint No. 2014-54 (Interim Order dated September 30, 2014). Further, the portion of the OPRA request seeking photographs reasonably identified a type of responsive record associated with the CAMA data. Such an action would not require an open-ended search of all Township files.
2. The Custodian did not bear her burden of proving that she lawfully denied access to the responsive CAMA data. N.J.S.A. 47:1A-6. Specifically, the evidence of record supports that the County maintained the data on behalf of the Township based on a shared services agreement. The Custodian had an affirmative obligation to obtain said data and provide it to the Complainant in accordance with prevailing case law but failed to do so. Burnett v. Cnty. of Gloucester 415 N.J. Super. 506 (App. Div. 2010); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). Further, the responsive data does not fall within the ACD exemption. See Hopkins v. Monmouth Cnty. Bd. of Taxation, et al., GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). However, the GRC declines to order disclosure because the Custodian, through Counsel, provided the responsive CAMA data to the Complainant on April 18, 2018



3. The Custodian unlawfully denied access to the responsive property photographs. N.J.S.A. 47:1A-6. Specifically, the records do not fall within the exemptions cited by the Township. Further, the Complainant's Counsel negated any privacy or security arguments by stating that the Complainant was not seeking any interior photographs. However, the GRC declines to order disclosure of the responsive photographs because the Custodian, through Counsel, did so on April 25, 2018.
4. Although the Custodian unlawfully denied access to the responsive records, she ultimately disclosed them through Custodian's Counsel on April 18, and 25, 2018 respectively. Additionally, 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, 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.
5. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Custodian, through Counsel, disclosed responsive records to the Complainant on April 18, and 25, 2018, respectively. Additionally, the Township's "eleventh hour" disclosure resulted in a voluntary change in the Custodian's conduct. Id. at 75-76. 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. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Interim Order Rendered by the
Government Records Council
On The 22nd Day of May, 2018

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: May 24, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
May 22, 2018 Council Meeting**

**Shawn G. Hopkins¹
Complainant**

GRC Complaint No. 2014-32

v.

**Township of Holmdel (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the computer assisted mass appraisal (“CAMA”) data for the Township of Holmdel (“Township”) including property photographs.

Custodian of Record: Maureen Doloughty
Request Received by Custodian: January 19, 2014
Response Made by Custodian: January 21, 2014
GRC Complaint Received: January 21, 2014

Background³

Request and Response:

On January 2, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 18, 2014,⁴ the Custodian advised the Complainant that she was unable to locate the subject OPRA request in her e-mail. The Custodian apologized for not responding, but noted that the Complainant could have contacted her directly instead of filing a complaint with the Government Records Council (“GRC”).

On January 19, 2014, the Complainant e-mailed the Custodian stating that he initially believed that the Custodian received his request because he did not receive an undeliverable notice. The Complainant noted that he had been having trouble obtaining this information from both the Monmouth County (“County”) Tax Board and a majority of the municipalities within the County. The Complainant stated that he believed the effort to restrict access was coordinated.

¹ Represented by Richard Gutman, Esq. (Montclair, NJ).

² Represented by Michael L. Collins, Esq. of Archer & Greiner, P.C. Previously represented by Christopher D. Ackerman, Esq., of Dilworth, Paxson, LLP (Red Bank, NJ).

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Council Staff the submissions necessary and relevant for the adjudication of this complaint.

⁴ The Complainant executed and submitted his complaint to the GRC via e-mail on this date: a Saturday. The Custodian responded directly to the Complainant after receiving the filing.

The Complainant stated that he would agree to withdraw the instant complaint if the Custodian could guarantee disclosure of the responsive CAMA data by January 24, 2014.

On January 20, 2014, the Custodian forwarded the Complainant's OPRA request to Assistant Tax Assessor Eileen Marchette and asked for assistance. Ms. Marchette e-mailed the Custodian and advised that she would need to discuss the request with the Tax Assessor and Custodian's Counsel because she was aware of other requests and that "there are issues."

Denial of Access Complaint:

On January 21, 2014, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant stated that he previously requested CAMA data from the County on December 18, 2013.⁵ The Complainant stated that the County advised him to request the data individually from each municipality.

The Complainant argued that the requested CAMA data has been stored in a database that the County has paid for and maintained since 1996. The Complainant asserted that the software program utilized for the data helps maintain and calculate assessments. The Complainant asserted that he believed that the Township unlawfully denied access to the requested data because:

- Six (6) municipalities in Monmouth County, Morris County, and Sussex County, as well as all 24 municipalities in Gloucester County, disclosed CAMA data to him. All municipalities utilize Microsystems-NJ.com, L.L.C., as their MODIV/CAMA vendor.
- The County funds, maintains, and operates the software program under a 1996 shared services agreement.
- The County accesses various information from the database.
- S-2234, entitled "Monmouth Assessment Demonstration Program," requires⁶ all municipalities within the County to utilize the MODIV/CAMA program, and there is a retention schedule for property record cards ("PRC").
- Revaluation contracts require firms to deliver PRCs to the municipality, which utilizes them to make the data files.
- The Tax Assessor's handbook refers to permanent PRCs and information that should be contained within an assessor's files.

Supplemental Response:

On January 21, 2014, the first (1st) business day after receipt of the OPRA request, the Custodian's Counsel responded in writing on behalf of the Custodian stating that, as constructed,

⁵ This request was the subject of Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.*

⁶ On January 10, 2011, the Senate passed S-2234 (Sca) 1R by a vote of 39-0. On that same date, the bill was received in the Assembly and referred to the Assembly Housing and Local Government Committee. Neither S-2234 nor its Assembly counterpart, A-3227, saw any further action in the Assembly during the 2010-2011 legislative session. The Complainant might instead be referring to S-1213, which Governor Christie signed into law as L. 2013, c. 15, on January 25, 2013.

the Complainant's request failed to identify with reasonable clarity the records sought. Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005). The Custodian's Counsel noted that requests for "any and all" tax assessment data is invalid. The Custodian's Counsel thus sought clarification of the Complainant's OPRA request to include a specific identifiable government record consistent with the Court's finding in Bent.

Statement of Information:

On February 24, 2014, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on January 19, 2014 (a Sunday). The Custodian certified that Custodian's Counsel responded in writing on her behalf on January 21, 2014 denying the Complainant's OPRA request as overly broad and seeking clarification of same.

The Custodian contended that the Complainant's request sought data, information, and/or statistics along with photographs of properties assessed by the Township. The Custodian contended that the request was thus invalid because it failed to identify records sought with reasonable clarity. Bent, 381 N.J. Super. at 37. The Custodian argued that the Complainant's request required the Township to create a record that it did not maintain in the ordinary course of business. Further, the Custodian argued that the portion of the request for photographs was equally vague.

Additional Submissions:

On July 24, 2014, Complainant's Counsel submitted a letter brief disputing the Township's position. Complainant's Counsel first stated that in Burnett v. Cnty. of Gloucester 415 N.J. Super. 506, 511-12 (App. Div. 2010), the Appellate Division held that a custodian was not required to perform research, compile information or create a new file. Counsel argued that the facts here are contrary to Burnett because the Complainant specifically identified the data file sought. Counsel noted that the Complainant provided the Custodian with specific instructions to locate the compressed data folder.

Complainant's Counsel next argued that the Complainant's request for photographs was specific and valid. Complainant's Counsel argued that Burnett supported that the Complainant did not need to seek photographs for specific properties; he clearly sought all photographs for every property in the Township. Further, Complainant's Counsel argued that the Custodian could easily locate photographs with a reasonable amount of effort. See Burke v. Brandes, 429 N.J. Super. 169, 176-77 (App. Div. 2012). Counsel also noted that numerous other municipalities have already complied with an identical request, which further supports that the request is valid.

Additionally, Complainant's Counsel contended that the Borough maintains CAMA data through the Monmouth Assessment Demonstration program based on a shared services agreement with the County. Complainant's Counsel contended that, when applying Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012), the Custodian was obligated to obtain and disclose the responsive information. See also Burnett, 415 N.J. Super. at 511-12.

On August 7, 2014, the original counsel for the Custodian submitted an opposition letter brief to Complainant Counsel's July 24, 2014 submission. Therein, Counsel contended that the Township did not maintain CAMA data: it was kept on a database maintained by the County. Counsel argued that the Complainant recognized this in his request by instructing the Township to "create" a file from said database. Counsel noted that even if the Township maintained the data, it would be exempt under OPRA either as "inter-agency or intra-agency advisory, consultative, or deliberative" ("ACD") material or through another exemption.

Counsel asserted that the Complainant's request sought wholesale access to data that local assessors input into a County-maintained database for purposes of property assessments. Counsel stated that assessors then use this data, which changes from hard data to formulated opinions throughout the assessment process, until the final valuation deadline on October 1 of each tax year. Counsel thus argued that the responsive data is exempt as ACD material because it is deliberative in nature and may include notes, citations, and formulaic observations of an assessor. Moreover, Counsel noted that the Supreme Court has previously determined that factual material may be considered ACD if it revealed an agency's deliberative process. See Educ. Law Ctr. v. NJ Dep't of Educ., 198 N.J. 274, 284 (2009). To this end, Counsel asserts that the Custodian would be required to review every single field to determine whether the responsive data fell within the ACD exemption. Counsel asserted that New Jersey Courts have routinely upheld a denial of access to requests requiring such an extraordinary task.

Additionally, Counsel contended that the above rationale also applied to the Township's denial of responsive photographs. Counsel asserted that assessors utilize the photographs as part of their valuation and commonly put notes thereon. Counsel also contended that disclosure of the photographs could compromise building security. N.J.S.A. 47:1A-1.1. Specifically, Counsel argued that the pictures could reveal security systems and styles of locks at entry points. For this reason, Counsel argued that the Township properly sought clarification of this portion of the Complainant's request.

On August 20, 2014, Complainant's Counsel submitted a letter brief in response to Custodian Counsel's submission. Therein, Complainant's Counsel argued that eighty-three (83) other municipalities were able to comply with an identical request. Complainant's Counsel further argued that fifty-four (54) municipalities granted access to photographs. Complainant's Counsel contended that these disclosures prove that the Complainant's OPRA request is valid.

Further, Complainant's Counsel contended that the Township erroneously relied on "alleged" exemptions without conducting a review. Complainant's Counsel argued that OPRA does not support speculation; rather, the Custodian was required to make redactions and disclose the remainder of the record. N.J.S.A. 47:1A-5(g). Complainant's Counsel also noted that the Complainant is only seeking access to photographs of the front of each house. Complainant's Counsel thus asserted that assessor's notes and photographs depicting security systems or non-public views are not at issue here.

On July 8, 2016, Complainant's Counsel requested that the GRC proceed with the adjudication of this complaint because, in Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.*, Microsystems waived its claim of confidentiality. Further,

Counsel noted that Microsystems agreed to provide responsive CAMA data for all municipalities in the County.

On April 18, 2018, Custodian's Counsel e-mailed the Complainant disclosing responsive CAMA data via e-mail and FedEx. On the same day, Custodian's Counsel submitted a certification to the GRC. Therein, Counsel affirmed that he contacted the Township and obtained for disclosure all responsive CAMA data.⁷ Counsel certified that he sent the data to the Complainant via e-mail on this day. Further, Custodian's Counsel stated that he reached out to the County to obtain any responsive property photographs that may exist.

Custodian's Counsel also requested that the GRC dismiss this complaint as moot based on the current and pending disclosure of records. Mason v. City of Hoboken, 196 N.J. 51, 61 (2008) (affirming the dismissal of OPRA counts as moot because defendant disclosed records either before or during litigation); Stop & Shop Supermarket Co., L.L.C. v. Cnty. of Bergen, 450 N.J. Super. 286, 291 (App. Div. 2017) ("It is firmly established that controversies which have become moot or academic prior to judicial resolution ordinarily will be dismissed." (citations omitted)).

On April 25, 2018, Custodian's Counsel e-mailed the Complainant advising that the Township was providing on a compact disc ("CD") those property photographs obtained from the County via FedEx. On the same day, Counsel e-mailed the GRC advising that the remaining records were sent to the Complainant and requesting that the GRC dismiss this complaint as moot.⁸

Analysis

Preface

The GRC must first address the mootness argument raised by Custodian's Counsel as a threshold issue. Specifically, in an April 18, 2018 submission, Custodian's Counsel argued that this complaint was moot because the Township ultimately disclosed the responsive records on April 18, and 25, 2018 respectively. Custodian's Counsel cited to Mason, 196 N.J. 51 and Stop & Shop, 450 N.J. Super. 286 in support of his argument.

To briefly address the mootness issue, the GRC disagrees that disclosure mooted this complaint. Although disclosure occurred, the legal "controversies" giving rise to the Complainant's filing still exist. Those "controversies" involve the validity of the Complainant's request as well as the disclosability of CAMA data and photographs under OPRA. To this end, the parties vigorously defended their positions regarding these issues over an eight (8) month period. Simply disclosing the records at a later date did not settle the legal dispute at the core of this complaint.

⁷ Custodian's Counsel noted that these actions took place after receiving the GRC's notification that this complaint was tentatively scheduled for the Council's May April 24, 2018 meeting.

⁸ Upon review of the submissions, the GRC found that the Township was using an outdated address for the Complainant. On May 3, 2018, the GRC advised the parties of this fact. On the same day, Custodian's Counsel resent his responses (and attached records) to the Complainant at the current address.

Further, neither Mason nor Stop & Shop, as relied on by the Custodian, apply here. In both of those cases, the courts acknowledged that disclosure took place, or was agreed upon, prior to the filing of each action. Mason, 196 N.J. at 81; Stop & Shop, 450 N.J. Super. 291. The same could not be said here, where the Complainant filed a Denial of Access Complaint after receiving a perceived denial of access. Further, no records were produced until well after the filing of this complaint. Based on this, the GRC will adjudicate the complaint addressing the threshold issues raised by the parties in their prior submissions.

Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.”* N.J.S.A. 47:1A-1.

[MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) (emphasis added).]

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt In short, OPRA does not countenance open-ended searches of an agency's files.” Id. at 549 (emphasis added). Bent, 381 N.J. Super. at 37;⁹ N.J. Builders Assoc. v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Most recently, the Supreme Court addressed a custodian’s obligation to coalesce information stored electronically into a single record. In Paff v. Twp. of Galloway, 229 N.J. 340

⁹ Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

(2017), the Court accepted plaintiff's appeal from the Appellate Division's decision that the defendant municipality was not required to coalesce basic information into an e-mail log and disclose same. The Appellate Court reached its conclusion by determining that such an action was akin to creating a record, which OPRA did not require (notwithstanding that the e-mail log would have taken a few key strokes to create). The Supreme Court reversed and remanded, holding that basic e-mail information stored electronically is a "government record" under OPRA, unless an exemption applies to that information. The Court reasoned that:

A document is nothing more than a compilation of information -- discrete facts and data. By OPRA's language, information in electronic form, even if part of a larger document, is itself a government record. Thus, electronically stored information extracted from an email is not the creation of a new record or new information; it is a government record.

....

With respect to electronically stored information by a municipality or other public entity, we reject the Appellate Division's statement that "OPRA only allows requests for records, not requests for information." Paff, 444 N.J. Super. at 503, (quoting Bent, 381 N.J. Super. at 37). That position cannot be squared with OPRA's plain language or its objectives in dealing with electronically stored information.

[Id. at 353, 356.]

In Fang v. Dep't of Transp., GRC Complaint No. 2006-93 (May 2007), the complainant sought disciplinary action records and specified the particular information that the records might contain. The custodian certified that no records existed that contained a compilation of the information specified by the complainant in the request. The Council, relying upon the Court's decision in MAG, 375 N.J. Super. 534, held that "[b]ecause OPRA does not require custodians to research files to discern which records may be responsive to a request or compile records which do not otherwise exist, the Custodian has met his burden of proof that access to these records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6. See [MAG]." Id. at 11.

Conversely, in Zahler v. Ocean Cnty. Coll., GRC Complaint No. 2013-266 (Interim Order dated July 29, 2014), the Council addressed the custodian's argument that she was not required to create a record in order to satisfy an OPRA request for database information pursuant to Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated February 27, 2008). Therein, the complainant sought access to a list of adjuncts to include certain information. The custodian produced a list that did not include all information sought; however, the evidence of record indicated that she could have produced a fully responsive record. Specifically, evidence existed to support that all information the complainant sought existed within a few different databases.

The Council first noted that the definition of a "government record" included "information stored or maintained electronically." N.J.S.A. 47:1A-1.1. The Council then

distinguished the facts of Morgano and held that the custodian unlawfully denied access to the responsive list containing all elements identified in the subject OPRA request. The Council reasoned that:

The Morgano decision refers to compiling certain disclosable information from a paper record and listing or creating another paper record responsive to a request. However, in terms of certain electronic filing systems, *general querying of information cannot be viewed as equal to creating a new paper record*. While information stored electronically may include additional pieces of information/fields, many programs have the capability to extract requested information/fields for disclosure . . . Further, querying electronic file systems for responsive information is not unlike searching an e-mail account for e-mails responsive to an OPRA request.

[Id. at 12 (emphasis added).]

In this matter, the Custodian denied the Complainant's OPRA request seeking CAMA data and property photographs stating that the request failed to identify the records sought. In response to the Complainant's Denial of Access Complaint, the Custodian argued that she properly denied the request because same was invalid. The Custodian contended that the Township was not required to compile information and create a new record. Bent, 381 N.J. Super. at 37. The Custodian argued that the portion of the request seeking photographs was equally invalid. In a July 29, 2014 letter brief, Complainant's Counsel refuted the Township's position, stating that the Custodian was merely required to retrieve a file or folder from a database. Further, Complainant's Counsel argued that the portion of the request seeking photographs was specific.

The threshold issue before the Council is whether the Complainant's request, including any responsive property photographs that may exist, was invalid because it failed to identify a specific record and would have required the Borough to create a new record.

In determining whether the Complainant's request seeking CAMA data was invalid, the Council distinguishes the instant complaint from Fang. Specifically, the requests at issue there sought general records inclusive of certain personnel information. However, the complaint here more closely fits on the square with Zahler, GRC 2013-266, notwithstanding that it was decided during the pendency of the instant complaint. The Court's decision in Paff, 229 N.J. 340, also decided after the pendency of this complaint, is binding here as well. Specifically, the Complainant here identified a specific type of record, CAMA data, which was accessible from a database by utilizing a few simple commands. The GRC notes that the Complainant included instructions that the Custodian could utilize to extract the responsive compressed file from the database. As was the case in Zahler, the Custodian was not required to create a record; rather, she was required to extract the CAMA data from a database. A similar type of compilation was also contemplated in Paff. See also McBride v. City of Camden (Camden), GRC Complaint No. 2014-54 (Interim Order dated September 30, 2014).

Regarding the portion of the request seeking photographs, Custodian argued in the SOI that it was similarly invalid as a blanket request. Custodian's Counsel reiterated these arguments in his July 24, 2014 letter brief.

The GRC is not persuaded by the Township's position: the request identifies a type of record (photographs) associated with the CAMA data sought. Thus, it is not unreasonable to believe that those photographs submitted to correspond with the data at that time, if any, were responsive to request. The GRC does not find that the portion of the request seeking photographs would require an "open-ended" search of every agency record. The GRC should note that this position is supported by Custodian Counsel's arguments regarding the potential content of the photographs.

Accordingly, the Complainant's OPRA request seeking CAMA data is valid. See also Paff, 229 N.J. 340; McBride, GRC 2014-54. The Custodian thus unlawfully denied access to the Complainant's OPRA request seeking CAMA data on the basis that same was invalid. N.J.S.A. 47:1A-6. Specifically, the Custodian was required to query a database and extract the responsive data: such an action does not amount to creating a new record. Zahler, GRC 2013-266. Further, the portion of the OPRA request seeking photographs reasonably identified a type of responsive record associated with the CAMA data. Such an action would not require an open-ended search of all Township files.

Unlawful Denial of Access

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.

CAMA data

Having determined that the Complainant's OPRA request seeking CAMA data was valid, the GRC now turns to whether the Custodian was obligated to provide the responsive records.

In Burnett v. Cnty. of Gloucester 415 N.J. Super. 506 (App. Div. 2010), the Appellate Division determined that defendant was required to obtain settlement agreements from its insurance broker. The Court's decision largely fell on the fact that there was no question that the broker was working on behalf of defendants to execute settlement agreements. The Court noted that it previously held that although a third party, such as insurance broker or outside counsel, may execute settlement agreements, "they nonetheless bind the county as principal, and the agreements are made on its behalf." Id. at 513. In determining that defendants had an obligation to obtain responsive records from the insurance broker, the Court noted that the facts there differed from those in Bent, 381 N.J. Super. 30, 38-39 (App. Div. 2005)(holding that plaintiff made no showing that the defendant was required to obtain records located outside its agency). The Council later applied the Court's holding to a complaint involving disclosure of records held by another public agency as part of a shared services agreement. See Michalak v. Borough of

Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012) (holding that an agency had an obligation to obtain records from another agency maintaining same in accordance with a shared services agreement).

In the matter currently before the Council, the Township has argued that the responsive CAMA data was maintained on the County's database. However, the Complainant's Counsel provided evidence strongly indicating that the County was maintaining the responsive CAMA data on behalf of the Township. Specifically, on July 24, 2014, Counsel provided to the GRC a copy of a shared services agreement between the County and Township to utilize computer tax services from January 1, 2012 to December 31, 2021. Additionally, the shared services agreement between the Township and County memorialized the use of MOD-IV Property Assessment Computer Services.

Based on all of the foregoing, the GRC is satisfied that the facts of this complaint mirror those in Burnett and especially Michalak. Specifically, the County either made and/or was maintaining the responsive CAMA data as part of a shared services agreement. The GRC is thus satisfied that the Custodian had an affirmative obligation to contact that source and obtain the responsive data for disclosure. However, the Custodian failed to do so until April 18 and 25, 2018.

Regarding the application of the ACD exemption, pursuant to N.J.A.C. 1:1-15.2(a) and (b), official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence), as well as of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. See Sanders v. Div. of Motor Vehicles, 131 N.J. Super. 95 (App. Div. 1974). The Council's decision here must take into account Administrative Law Judge ("ALJ") Kimberly A. Moss' Final Decision in Hopkins v. Monmouth Cnty. Bd. of Taxation, et al, GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016), because the ALJ held on whether CAMA data is a "government record" subject to access under OPRA.¹⁰ Therein, the ALJ found that "CAMA data are government records that are used in the ordinary course of business and none of the exceptions in N.J.S.A. 47:1A-1.1 apply in this matter." Id. at 18.

In Hopkins, the Counties similarly argued that the ACD exemption and personal privacy exemptions applied to the responsive CAMA data because it is never finalized and some of the data ultimately made up the MOD-IV program. In reaching the conclusion that no exemptions applied, the ALJ noted that:

There was no testimony that CAMA data was used in the formulation of policy. CAMA data is facts about properties. The CAMA documents do not contain opinions, recommendations, or advice about agency policy as expressed in [In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 84-85 (2000)]. There was no testimony that the CAMA data contained opinions, recommendations, or [advice]. The CAMA data contains facts. . . . Some of the CAMA data, the Mod-4, and SR1A data, is on the [I]nternet.

¹⁰ The ALJ's Initial Decision became final by operation of law on April 4, 2016.

[Id. at 16.]

The GRC finds the foregoing instructive here. Specifically, the Custodian argued that the CAMA data was exempt as ACD material. Similar to the ACD argument in Hopkins, the Custodian asserted that the data was deliberative in nature and may include formulaic notations. Further, the Custodian asserted that the data included thoughts, ideas, and notes that would take time to review and redact. As was the case in Hopkins, the GRC does not find this argument compelling for the reasons contemplated by the ALJ.

Therefore, the Custodian did not bear her burden of proving that she lawfully denied access to the responsive CAMA data. N.J.S.A. 47:1A-6. Specifically, the evidence of record supports that the County maintained the data on behalf of the Township based on a shared services agreement. The Custodian had an affirmative obligation to obtain said data and provide it to the Complainant in accordance with prevailing case law but failed to do so. Burnett, 381 N.J. Super. 506; Michalak, GRC 2010-220. Further, the responsive data does not fall within the ACD exemption. See Hopkins, GRC 2014-01, *et seq.* However, the GRC declines to order disclosure because the Custodian, through Counsel, provided the responsive CAMA data to the Complainant on April 18, 2018

Property Photographs

Having determined that the Complainant's OPRA request seeking property photographs was valid, the GRC now turns to whether the Custodian was obligated to provide the responsive records.

In his August 7, 2014 letter to the GRC, Custodian's Counsel argued that property photographs would fall within the ACD, as well as security, exemptions under OPRA. N.J.S.A. 47:1A-1.1. In his August 20, 2014 rebuttal, Complainant's Counsel contended that the Custodian's failure to perform a review rendered these exemptions erroneous. Further, Complainant's Counsel noted that the Complainant only sought photographs of the front of each house; thus, the security exemption would not apply. However, on April 18, 2018, the Township contacted the County to determine whether any records existed. On April 25, 2018, the Township received and forwarded, through Council, a CD containing the responsive property photographs.

Taking into account all arguments and recent facts, the GRC finds that the Custodian unlawfully denied access to the responsive photographs. The Custodian denied access to the portion of the request for several reasons without attesting to their existence. Further, the Complainant was not seeking interior photographs: that admission effectively cures the Custodian's concerns of privacy or security. Finally, on April 25, 2018, the Township disclosed to the Complainant the responsive photographs on a CD.

Accordingly, the Custodian unlawfully denied access to the responsive property photographs. N.J.S.A. 47:1A-6. Specifically, the records do not fall within the exemptions cited by the Township. Further, the Complainant's Counsel negated any privacy or security arguments by stating that the Complainant was not seeking any interior photographs. However, the GRC

declines to order disclosure of the responsive photographs because the Custodian, through Counsel, did so on April 25, 2018.

Knowing & Willful

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the instant complaint, although the Custodian unlawfully denied access to the responsive records, she ultimately disclosed them through Custodian’s Counsel on April 18, and 25, 2018 respectively. Additionally, 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, 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.

Prevailing Party 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 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.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason, 196 N.J. 51, the Supreme 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, 196 N.J. at 71, (quoting Buckhannon Bd. & Care Home v. West Virginia Dep’t of Health & Human Res., 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. Further, the Supreme Court expressed 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.

However, the Court noted in Mason, that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, 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 accepted the application of the catalyst theory within the context of OPRA, stating that:

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.

[Mason at 73-76 (2008)].

The Court in Mason, further held that:

[R]equestors 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).

[Id. at 76].

The Complainant filed the instant complaint asking that the Council order disclosure of the requested CAMA data and photographs. The Custodian argued in the SOI that the Complainant’s request was invalid because it sought information or was vague. In a later submission, original counsel to the Custodian argued that the Township did not possess the responsive records, that they were ACD in nature, and that disclosure of the photographs presented a security issue under N.J.S.A. 47:1A-1.1. Notwithstanding the forgoing, the Custodian disclosed responsive records to the Complainant between April 18, and 25, 2018 through Custodian’s Counsel.

In determining whether the Complainant was a prevailing party, the GRC applies the catalyst theory to determine whether a factual causal nexus exists between this complaint and the Custodian’s disclosure. In reviewing the Mason Court’s reasoning for applying the catalyst theory to OPRA, the GRC finds the following excerpt persuasive to the facts in this complaint:

Plaintiff and amici rightly advance another reason why the catalyst theory should apply to OPRA: the potential for abuse should an agency deny access, vigorously defend against a lawsuit, and then unilaterally disclose the documents sought at the eleventh hour to avoid entry of a court order and the resulting award of attorney's fees . . . [U]nlike other fee-shifting statutes, OPRA does not provide for damages . . . Under the catalyst theory, plaintiffs can recover counsel fees if they are able to prove their lawsuit caused an eleventh-hour disclosure.

[Id. at 75-76.]

Here, the Complainant filed his complaint requesting that the Council order disclosure of the records. The Custodian advanced several reasons for denying access during the pendency of the complaint. However, after receiving the GRC’s notification regarding a tentative adjudication, the Custodian disclosed all responsive records on April 18, and 25, 2018 through Counsel. Such an “eleventh hour” disclosure is exactly the one contemplated by the Mason Court when determining that the catalyst theory should apply to OPRA.

Therefore, the GRC is satisfied that this complaint directly brought about a voluntary change in the Custodian’s conduct. Further, the Custodian’s change is linked inextricably to this complaint because disclosure occurred after the Township received a notification from the GRC regarding its the tentative adjudication. Thus, the evidence of record supports that the Complainant is a prevailing party entitled to an award of attorney’s fees.

Therefore, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters, 387 N.J. Super. 432. Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. 51. Specifically, the Custodian, through Counsel, disclosed responsive records to the Complainant on April 18, and 25, 2018, respectively. Additionally, the Township’s “eleventh hour” disclosure resulted in a voluntary change in the Custodian’s conduct. Id. at 75-76. 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. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney’s fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian unlawfully denied access to the Complainant’s OPRA request seeking CAMA data on the basis that same was invalid. N.J.S.A. 47:1A-6. Specifically, the Custodian was required to query a database and extract the responsive data: such an action does not amount to creating a new record. Zahler v. Ocean Cnty. Coll., GRC Complaint No. 2013-266 (Interim Order dated July 29, 2014). For that reason, the Complainant’s OPRA request seeking CAMA data is valid. See also Paff v. Twp. of Galloway, 229 N.J. 340 (2017); McBride v. City of Camden (Camden), GRC Complaint No. 2014-54 (Interim Order dated September 30, 2014). Further, the portion of the OPRA request seeking photographs reasonably identified a type of responsive record associated with the CAMA data. Such an action would not require an open-ended search of all Township files.
2. The Custodian did not bear her burden of proving that she lawfully denied access to the responsive CAMA data. N.J.S.A. 47:1A-6. Specifically, the evidence of record supports that the County maintained the data on behalf of the Township based on a shared services agreement. The Custodian had an affirmative obligation to obtain said data and provide it to the Complainant in accordance with prevailing case law but failed to do so. Burnett v. Cnty. of Gloucester 415 N.J. Super. 506 (App. Div. 2010); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). Further, the responsive data does not fall within the ACD exemption. See Hopkins v. Monmouth Cnty. Bd. of Taxation, et al., GRC Complaint No. 2014-01 *et seq.* (Interim Order dated July 26, 2016). However, the GRC declines to order disclosure because the Custodian, through Counsel, provided the responsive CAMA data to the Complainant on April 18, 2018
3. The Custodian unlawfully denied access to the responsive property photographs. N.J.S.A. 47:1A-6. Specifically, the records do not fall within the exemptions cited by

the Township. Further, the Complainant's Counsel negated any privacy or security arguments by stating that the Complainant was not seeking any interior photographs. However, the GRC declines to order disclosure of the responsive photographs because the Custodian, through Counsel, did so on April 25, 2018.

4. Although the Custodian unlawfully denied access to the responsive records, she ultimately disclosed them through Custodian's Counsel on April 18, and 25, 2018 respectively. Additionally, 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, 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.
5. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Custodian, through Counsel, disclosed responsive records to the Complainant on April 18, and 25, 2018, respectively. Additionally, the Township's "eleventh hour" disclosure resulted in a voluntary change in the Custodian's conduct. Id. at 75-76. 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. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

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