



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 13, 2018 Government Records Council Meeting

Michael J. Panter, Esq.
Complainant

Complaint No. 2015-368

v.

Ocean County Board of Chosen Freeholders
Custodian of Record

At the November 13, 2018 public meeting, the Government Records Council (“Council”) considered the November 7, 2018 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 Complainant’s OPRA requests. N.J.S.A. 47:1A-6. The evidence in the record demonstrates that the Custodian does not control or maintain the records sought, but rather the Board. Therefore, the matter should be dismissed. Burnett v. Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012).
2. 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. Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, no 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, 76 (2008). Specifically, the evidence of record supports that the Custodian is not the correct party to file a complaint against, as the Board is the agency in control of the records sought. Therefore, the Complainant is not a prevailing party and is not entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76.

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 13th Day of November, 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: November 15, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
November 13, 2018 Council Meeting**

**Michael J. Panter, Esq.¹
Complainant**

GRC Complaint No. 2015-368

v.

**Ocean County Board of Chosen Freeholders²
Custodial Agency**

Records Relevant to Complaint:

July 8, 2015 OPRA Request

“All correspondence (including email, regular mail, facsimile or hand deliveries) in which Chelsea Skuby, Ocean County Tax Administrator (“CS”) was the sender or a recipient of any type, from October 1, 2014 to July 8, 2015, which relate to any of the following topics or subject matter in any way, or contain these terms or any abbreviations for the same, including in the case of email correspondence, in the subject, body or any attached documents thereto:

Realty Data Systems, RDS, Realty Appraisal Company, Realty, Neil Rubenstein, Steve Rubenstein, Revaluation, Daniel Kelly, Michael Panter, Assessment Demonstration Program, ADP, Monmouth ADP, Wayne Pomanowski, Robyn Palughi, Howell Township, Wall Township, ‘Monmouth County Concerned Citizens’, Appraisal Systems, ASI, Burlington County, Burlington County Tax Board, Asbury Park Press, Eve Cullinan or Margaret Nuzzo.

All electronic records or written records contained in the files of CS or any member of her staff pertaining to a letter titled (in part) “Monmouth County Concerned Citizens Group”, or the Assessment Demonstration Program aka the ADP and/or Monmouth ADP.”

July 29, 2015 OPRA Request

“All correspondence (including email, regular mail, facsimile or hand deliveries) in which Chelsea Skuby, Ocean County Tax Administrator [] was the sender or a recipient of any type, from October 1, 2014 to July 29, 2015, which include any of the following topics or subject matter in any way, or contain these terms or any abbreviations for the same, including in the case of email correspondence, in the list of any senders or receivers of any type (including those copied and blind-copied), and/or in the subject, body or any attached documents thereto:

Martin M. Guhl, CTA, Mercer County Tax Administrator, Mercer County Tax Board.

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

² Represented by John C. Sahradnik, Esq., of Berry, Sahradnik, Kotzas & Benson (Tom’s River, NJ).

Since this OPRA request pertains to the conduct of Ms. Skuby, please include a statement confirming the party or parties who gathered the requested public records, and whether Ms. Skuby was relied upon, exclusively or in part, for providing/withholding her own records. We are also formally requesting this same information with respect to our OPRA request dated 7.8.2015.”

Custodian of Record: Betty Vasil

Request Received by Custodian: July 8, 2015; July 29, 2015

Response Made by Custodian: July 10, 2015; July 16, 2015; July 28, 2015; August 7, 2015

GRC Complaint Received: November 19, 2015

Background³

Request and Response:

On July 8, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 10, 2015, the Custodian responded in writing seeking an extension of seven (7) business days to respond to the Complainant’s request, specifically through July 29, 2015. On July 16, 2015, the Custodian informed the Complainant that the records sought were retrieved by the Ocean County Information Technology (“IT”) Department. Additionally, the Custodian stated that the Office of the Tax Administrator had their own records custodian, and thus the e-mail records would be reviewed and delivered by that agency’s attorney. On July 28, 2015, the Custodian informed the Complainant that an additional ten (10) business days was required to review the documents for exempt, privileged, or confidential material.

On July 29, 2015, the Complainant submitted a second OPRA request seeking the above-mentioned records. On August 7, 2015, the Custodian e-mailed the Complainant acknowledging receipt of the second OPRA request. The Custodian reiterated her earlier statement to the Complainant that the Ocean County Board of Taxation (“Board”) had own Records Custodian, Chelsea Skuby (“Ms. Skuby”). However, the Custodian noted that the Complainant’s OPRA requests sought correspondence between Ms. Skuby and other identified parties. Therefore, the Custodian stated that the attorney for the Board would be reviewing the records prior to release, to avoid any potential conflict of interest. Lastly, the Custodian stated that she was asked to inform the Complainant that an additional extension of time was needed through September 14, 2015.

On October 8, 2015, the Complainant submitted a letter to the Custodian, expressing concern that no responsive records have been produced pertaining to the July 8, 2015 OPRA request beyond requests for extensions, and no response at all pertaining to the July 29, 2015 OPRA request. The Custodian responded on October 13, 2015, restating that the Board had its own custodian, and that review of any responsive records to both requests would be done by the Board’s attorney. The Custodian also stated that she advised the Board that any further

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.

communication to the Complainant regarding his OPRA requests should be made directly to the Complainant via the Board.

On October 21, 2015, Christine Allen (“Ms. Allen”), the Deputy Records Custodian for the Board, informed via e-mail the Custodian that documents numbered 1-134 have been authorized for release pertaining to the Complainant’s July 29, 2015 OPRA request, and were attached to the message. The Custodian responded that same day, telling Ms. Allen that as the Records Custodian for the Board, the release of the records should be executed by her directly.

On October 25, 2015, then Complainant responded to the Custodian’s October 13, 2015 message, noting how long it had been since he submitted the July 8, 2015 OPRA request, and that the latest extension of time to respond had expired more than a month ago. The Complainant also requested the identity of the Board’s counsel so he could contact them directly. On October 26, 2015, the Custodian informed the Complainant that the Board was represented by the New Jersey Office of the Attorney General (“Attorney General’s Office”), and the Complainant should contact them directly to identify the counsel assigned to the Board.

On November 12, 2015, the Complainant sent a letter via e-mail to DAG Michelline Capistrano Foster (“DAG Foster”) regarding the above-mentioned OPRA requests. The Complainant provided a timeline of communication exchanges with the Custodian and made note of the lack of production for either OPRA request. On November 18, 2015, the Complainant sent an additional letter to DAG Foster, informing her that an additional extension of thirty (30) days to respond to the July 8, 2015 OPRA request would not be allowed, and that complaints would be filed that day.

Denial of Access Complaint:

On November 19, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that he filed both OPRA requests with the “Custodian of Records in the Office of the Clerk of the Board of Chosen Freeholders, Ocean County” (“Ocean County”). The Complainant stated that both requests utilized the record request form for Ocean County.

The Complainant asserted that as of the date of filing this complaint, he had not received any responsive records from the Custodian, despite repeated communications with Ocean County officials and representatives. The Complainant provided a timeline of communications with the Custodian, asserting that prior to a phone conversation with DAG Foster, all correspondence pertained to the July 8, 2015 OPRA request.

The Complainant noted that it had been 124 days since the Custodian confirmed the existence of responsive records to the July 8, 2015 OPRA request. The Complainant contended that the length of time that had passed since submitting these requests constituted an intentional effort to delay or withhold access to public records. The Complainant asserted that a six (6) month review period was unreasonable and not in line with the purpose of OPRA. Lastly, the Complainant noted that the Custodian ceased making extension requests since the most recent

request expired on September 14, 2015. The Complainant requested that the GRC address the issues raised, including whatever penalties that may be suitable under OPRA.

Supplemental Response:

On December 7, 2015, Ms. Allen e-mailed the Complainant, informing him that she received 771 pages of e-mail records for review pertaining to his July 29, 2015 OPRA request. The e-mail also included copies of the partial response Ms. Allen forwarded to the Custodian October 21, 2015. Among those records, Ms. Allen identified those that contained redactions of e-mail addresses and cell phone numbers of private individuals, privileged material that is consultative, advisory, or deliberative in nature. Ms. Allen noted that review of the remaining documents would be forthcoming, forwarded to the Custodian for release in batches. Ms. Allen stated that she expected delivery of the next batch of records to the Custodian on or before December 18, 2015.

On December 8, 2015, the Custodian e-mailed Ms. Allen, reiterating to her that as the Records Custodian for the Board, it was her responsibility to directly respond to the Complainant. The Custodian also stated that any future batch of responsive records should not be delivered to her but delivered solely to the Complainant.

Statement of Information:

On December 23, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 8, 2015.

The Custodian first noted that the Board was not an agency of Ocean County, but rather an agency of the State of New Jersey’s Division of Taxation. The Custodian certified that Ocean County provided the Board with office space, supplies, and a location for records retention under state law. The Custodian also noted that Ms. Skuby was the Records Custodian for the Board at the time of the request. Upon receipt of the request, the Custodian certified that she forwarded it to Ms. Skuby. The Custodian then certified that Ocean County and the Board shared a server for electronic information storage, but the Board did not have an information technology (“IT”) department. Ms. Skuby told the Custodian to reach out to Ocean County’s IT department for assistance in retrieving responsive records.

The Custodian certified that on July 16, 2015, she replied to the Complainant stating that the IT department had the request and that the Board’s attorney would review any responsive materials. On July 28, 2015, the Custodian sought an extension of time on behalf of Ms. Skuby and told the Complainant that the Board attorney was still reviewing the materials for exempt, privileged, or confidential materials.

The Custodian certified that on July 29, 2015, she received the Complainant’s second OPRA request, and forwarded it to Ms. Skuby. On August 7, 2015, the Custodian e-mailed the Complainant, restating that Ms. Skuby was the Records Custodian for the Board, but because she had a conflict with this particular request, the matter would be reviewed by DAG Foster. The Custodian then certified that on August 13, 2015, the Board appointed Ms. Allen as Deputy

Records Custodian. The Custodian also certified that on September 14, 2015, she informed Ms. Allen that it was her responsibility to handle the OPRA request and that extensions of time should be requested directly from her office.

The Custodian certified that she did not have any responsive records to the Complainant's requests. The Custodian certified that, at the Board's request, Ocean County's IT department performed a search for records on the server shared by both entities. The Custodian certified that the results of the search were forwarded to Ms. Skuby on or about July 16, 2015. The Custodian also certified that because she was not the records custodian for the Board, she could not certify as to whether the responses to the OPRA requests were complete; nor could she certify to the redactions made, believing that Ms. Allen or DAG Foster performed the redactions.

Additional Submissions:

On February 10, 2016, the Complainant e-mailed the GRC. The Complainant stated that since filing his complaint, Ms. Allen provided responsive records to his OPRA requests. The Complainant stated that Ms. Allen provided records originating from the Board and Ocean County's IT department.

Regarding the July 29, 2015 OPRA request, the Complainant stated that Ms. Allen provided eighty-nine (89) pages of records on December 8, 2015; 194 pages on December 11, 2015; 226 pages on December 18, 2015; and 107 pages on December 22, 2015. Regarding the July 8, 2015 OPRA request, the Complainant stated that Ms. Allen provided 102 pages of records on January 8, 2016; 124 pages of records on January 22, 2016; and 199 pages of records on February 5, 2016.

On March 17, 2016, the Complainant e-mailed the GRC as a follow up to his earlier correspondence. The Complainant stated that he wished to amend his Denial of Access Complaint to include the Board and Ms. Skuby as additional parties, since the Custodian had previously stated that those parties shared responsibility in creating and maintaining the requested records. The Complainant noted that twenty (20) days following the complaint filing, Ms. Allen began providing responsive records. The Complainant also asserted that in addition to the previous submissions, Ms. Allen provided records responsive to the July 8, 2015 OPRA request on March 11, 2016, and allegedly will provide additional records on March 24, 2016.

On April 8, 2016, the Board responded to the Complainant's request to amend his complaint. The Board objected to the request on procedural and substantive grounds. First, the Board stated that the request to amend was untimely because the Complainant's request to amend is beyond the thirty (30) business day amendment period pursuant to N.J.A.C. 5:105-2.3(h)(1). Additionally, the Board argued that the Complainant's request was not being made in the form of a formal motion for consideration and authorization pursuant to N.J.S.A. 47:1A-6, N.J.A.C. 5:105-2.3(h)(2), N.J.A.C. 5:105-1.1(b), and N.J.A.C. 1:1-12.1(a). Lastly, the Board asserted that the requested records had since been provided to the Complainant, thus rendering the matter moot.

On April 21, 2016, the Custodian responded to the Complainant's request to amend his complaint. The Custodian asserted that she did not receive the Complainant's March 17, 2016 correspondence expressing the desire to amend the complaint but was only noticed via the Board's April 8, 2016 response. The Custodian asserted that N.J.A.C. 5:105-2.3(h)(1) required that any amendments to a complaint must be served simultaneously to all parties. Therefore, the Custodian requested that the Complainant provide proof of service to Ocean County of its March 17, 2016 letter. If none could be provided, the Custodian requested that the GRC object to any *ex parte* document submitted by the Complainant.

On April 21, 2016, the GRC responded to all parties regarding the Complainant's request to amend the denial of access complaint. The GRC denied the Complainant's request pursuant to N.J.A.C. 5:105-2.3(h)(2), in that the request was made approximately four (4) months since the initial filing.

On May 10, 2016, at the GRC's request, the Custodian submitted a revised SOI. In response to the Item 9 Index, the Custodian certified that the requested records were not a public record of Ocean County. The Custodian certified that the records at issue were under the custody, care, and control of the Board, and therefore requested that the complaint be withdrawn and refiled against the Board.

Analysis

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.

The primary issue in this matter is whether the Custodian and Ocean County were in control of the records at issue, and therefore responsible for handling the Complainant's OPRA request. In Burnett v. Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010), the court determined that the defendant was required to obtain settlement agreements from its insurance broker. 415 N.J. Super. at 517. The court's decision primarily relied upon on the fact that the broker was working on behalf of the defendants to negotiate and execute settlement agreements. Id. at 513. The court noted that it previously held that while insurance brokers or outside counsel are third parties, "they nonetheless bind the county as principle, and the agreements are made on its behalf." Id. 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 v. Stafford Police Dep't, 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).⁴

In Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012), the Council held that the custodian was required to obtain responsive

⁴ Affirming Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004)

dispatch records from Spotswood Police Department because the Borough had entered into an interlocal (or shared services) agreement with Spotswood to operate their dispatch log. The Council reasoned that: “[s]imilar to a third-party agreement between a public agency and a private entity . . . the records responsive . . . were records “made, maintained or kept on file” for the Borough by the [Spotswood Police Department] pursuant to said agreement. As in Burnett, the responsive dispatch logs were created on behalf of the Borough by the SPD. Additionally, as previously held in Meyers, the location of the requested records is immaterial . . .” Id. at 10.

The facts in this matter differ from those in Burnett and Michalak. In both cases, the third party was in direct agreement, either contractually or otherwise, to handle matters on the custodial agency’s behalf, as well as create or maintain public records. Here, the Custodian certified that, notwithstanding the Board’s receipt of facility space and server access from Ocean County, she did not have access to the Board’s files. The Custodian certified that Ocean County did not have an agreement with the Board to create or maintain records on its behalf. The Custodian also certified that the search and review of the responsive records was handled by Ms. Allen and/or DAG Foster, and is unable to confirm the accuracy of the production.

Therefore, the Custodian did not unlawfully deny access to the Complainant’s OPRA requests. N.J.S.A. 47:1A-6. The evidence in the record demonstrates that the Custodian does not control or maintain the records sought, but rather the Board. Therefore, the matter should be dismissed. Burnett, 415 N.J. Super. at 517; Michalak, GRC 2010-220.

Prevailing Party Attorney’s Fees

On May 9, 2017, the Complainant’s Counsel filed a notice of motion and application for an award of attorney’s fees pertaining to the current matter. On May 19, 2017, the Board filed a letter in response, asserting that they are not parties to the current matter, and are therefore not requiring to file a formal response to the attorney-fee application.

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 v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), 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 contending that the Custodian's extensions and failure to disclose records was unreasonable. The parties had corresponded between each other prior to the complaint filing, however as early as July 16, 2015, the Custodian told the Complainant that the Board, not Ocean County, was responsible for completing the July 8, 2015 OPRA request, and restated as much upon receipt of the July 29, 2015 OPRA request. The GRC agreed with the Custodian that the Board was vested with the responsibility for fulfilling the OPRA requests, and the complaint should be dismissed. Therefore, the GRC finds that the evidence supports that the complaint was not the catalyst for the Board's disclosure of records and that no causal nexus exists here. Thus, the Complainant is not a prevailing party and is not entitled to an award of reasonable attorney's fees.

Accordingly, 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. Teeters, 387 N.J. Super. at 432. Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the evidence of record supports that the Custodian is not the correct party to file a complaint against, as the Board is the agency in control of the records sought. Therefore, the Complainant is not a prevailing party and is not entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 51.

Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the Complainant's OPRA requests. N.J.S.A. 47:1A-6. The evidence in the record demonstrates that the Custodian does not control or maintain the records sought, but rather the Board. Therefore, the matter should be dismissed. Burnett v. Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012).
2. 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. Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, no 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, 76 (2008). Specifically, the evidence of record supports that the Custodian is not the correct party to file a complaint against, as the Board is the agency in control of the records sought. Therefore, the Complainant is not a prevailing party and is not entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76.

Prepared By: Samuel A. Rosado
Staff Attorney

November 7, 2018