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PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**August 27, 2019 Government Records Council Meeting**

Libertarians for Transparent Government  
Complainant

Complaint No. 2017-236

v.

Point Pleasant Borough Board of Education (Ocean)  
Custodian of Record

At the August 27, 2019 public meeting, the Government Records Council (“Council”) considered the August 20, 2019 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:

1. The Custodian did not unlawfully deny access to the requested Order. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the BOE disclosed the only record that existed at the time. DiCampli v. N.J. State Police, GRC Complaint No. 2013-338 (July 2014). Additionally, the Custodian was under no obligation to contact the Superior Court, Ocean County Clerk’s Office to obtain a copy of the complete Order so as to satisfy the subject OPRA request. Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 38 (App. Div. 2005).
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, 387 N.J. Super. 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. 51. Specifically, the Custodian provided the only Order that existed at the time of the of the Complainant’s OPRA request, which was incomplete. Further, the Custodian was not required to obtain the completed copy from the Superior Court, Ocean County Clerk’s Office in order to satisfy the request. Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 38 (App. Div. 2005). Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008).

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

at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819,  
Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 27<sup>th</sup> Day of August 2019

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: August 29, 2019**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
August 27, 2019 Council Meeting**

**Libertarians for Transparent Government<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-236**

v.

**Point Pleasant Borough Board of Education (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copy via e-mail and facsimile of the court order approving a settlement in W.S. v. Point Pleasant Bd. of Educ., Docket No. OCN-L-229-15.<sup>3</sup>

**Custodian of Record:** Steven W. Corso

**Request Received by Custodian:** October 30, 2017

**Response Made by Custodian:** November 7, 2017

**GRC Complaint Received:** December 13, 2017

**Background<sup>4</sup>**

**Request and Response:**

On October 30, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 7, 2017, Confidential Secretary Lisa Thomas responded in writing stating that responsive records were available for pickup upon payment of \$1.45. On the same day, the Complainant e-mailed Ms. Thomas noting that he sought the records electronically via e-mail.

On November 13, 2017, the Complainant e-mailed Ms. Thomas again stating that her initial response violated OPRA and that the responsive record should be disclosed electronically (citing Paff v. Gloucester City (Camden), GRC Complaint No. 2009-102 (Interim Order dated April 8, 2010)). Later that day, Ms. Thomas e-mailed the Complainant disclosing the responsive record electronically with redactions. The Complainant responded noting that the second page of the Court Order was missing and requesting that the page either be disclosed or that Ms. Thomas provide a lawful basis for its denial. Ms. Thomas replied that “[t]he second page is not missing. The attachment is the same as the original [she] scanned.” The Complainant subsequently e-mailed

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<sup>1</sup> Represented by Ted M. Rosenberg, Esq. (Moorestown, NJ).

<sup>2</sup> Represented by Gordon J. Golum, Esq. of Wilentz, Goldman & Spitzer, P.A. (Woodbridge, NJ).

<sup>3</sup> The Complainant sought additional records not at issue in this complaint.

<sup>4</sup> 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 Executive Director the submissions necessary and relevant for the adjudication of this complaint.

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Ms. Thomas complaining that no lawful basis for the redactions was provided. On November 20, 2017, Ms. Thomas e-mailed the Complainant disclosing the record without redactions.

Denial of Access Complaint:

On December 13, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to disclose the complete October 19, 2016 Court Order. The Complainant noted that the record provided comprised only the first and last page of the Order, as demarcated by “P.2/7” and “P.4/7” in the top margin. The Complainant further noted that the disclosure also did not include “P.5/7,” “P.6/7,” and “P.7/7.” Complainant contended that he alerted the Custodian to the issue, but she refused to provide the missing pages.

The Complainant argued that it is likely “P.3/7” contained the settlement amount, which is critical to its understanding of the case. Further, the Complainant asserted that the remaining missing pages were likely responsive to the request as well. The Complainant also contended that the Custodian’s response that the record provided was the only record maintained was not persuasive. The Complainant asserted that the Custodian, once alerted to the omission, should have contacted either the BOE’s insurance carrier or attorney to obtain the entire document. The Complainant thus requested that the GRC: 1) determine that the Custodian violated OPRA; 2) order the Custodian to disclose the missing pages; and 3) award prevailing party attorney fees.

Supplemental Responses:

On December 13, 2017, Custodian’s Counsel e-mailed Jeffrey L. Shanaberger Esq.<sup>5</sup> advising him of the instant complaint. Counsel stated that the Point Pleasant Borough Board of Education (“BOE”) forwarded to the Complainant the Order Mr. Shanaberger provided to it. Counsel asked whether Mr. Shanaberger had any additional pages, as pages 1 and 3 appear to be missing. On the same day, Mr. Shanaberger e-mailed Counsel confirming that he only possessed two pages and that he did not maintain a complete copy of the Order.

On December 27, 2107, Custodian’s Counsel sent a letter to Complainant’s Counsel stating that, while not required under OPRA, a request for the complete Order was made to the Superior Court, Ocean County Clerk’s Office. Counsel stated that once the BOE received the complete Order, same would be disclosed to the Complainant. Counsel also noted that in furtherance of transparency, he was providing the resolution that included the settlement amount.<sup>6</sup> Counsel also noted that O’Boyle v. Borough of Longport, 426 N.J. Super. 1, 14 (2012) (citing Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010)) was distinguishable from this situation. Counsel maintained that the BOE disclosed the only Order that was in Mr. Shanaberger’s possession.

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<sup>5</sup> Mr. Shanaberger, of Hill Wallack, LLP. (Princeton, NJ), represented the Point Pleasant Borough Board of Education in W.S., Docket No. OCN-L-229-15.

<sup>6</sup> Counsel noted that, based on a letter from Complainant’s Counsel dated December 20, 2017, the Complainant appeared most interested in the settlement amount. The GRC was not provided a copy of this letter; thus, its contents are not included herein.

On December 28, 2017, Mr. Shanaberger e-mailed Custodian's Counsel advising that he was able to obtain a complete copy of the Order from the Surrogate's Office. Mr. Shanaberger attached the order to said e-mail. On the same day, Custodian's Counsel sent another letter to Complainant's Counsel disclosing the complete Order. Custodian's Counsel also noted that he did not believe that this disclosure rendered the Complainant a prevailing party entitled to an award of attorney's fees. Counsel maintained that the forgoing was based on the fact that the BOE provided the record it had in its possession at that time and no unlawful denial of access occurred.

Statement of Information:

On January 23, 2018, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that he received the Complainant's OPRA request on October 30, 2017. The Custodian certified that his search included contacting Mr. Shanaberger to obtain a copy of the responsive Order. The Custodian certified that having received the Order believed to be responsive, Ms. Thomas responded in writing on his behalf on November 7, 2017 advising that the record was available for pickup. The Custodian certified that Ms. Thomas subsequently e-mailed the Order to the Complainant on November 13, 2017 (redacted) and again on November 20, 2017 (unredacted).

The Custodian affirmed that the record at issue here related to litigation in which Mr. Shanaberger was assigned by the BOE's insurance company to represent it. The Custodian certified that the Order was prepared by plaintiff's attorney, who was required to disseminate it to all parties and the court. The Custodian affirmed that upon receipt of the request, Mr. Shanaberger sent the BOE the only copy of the Order he possessed, which was incomplete. The Custodian certified that following the filing of this complaint, the BOE contacted Mr. Shanaberger about the Complainant's allegation that the Order was incomplete. The Custodian certified that Mr. Shanaberger confirmed that the Order he possessed was incomplete. The Custodian affirmed that Mr. Shanaberger and Custodian's Counsel worked to obtain a complete copy of the Order from the court. The Custodian certified that Mr. Shanaberger was able to obtain a complete copy from the Surrogate's Office on December 28, 2017, which Custodian's Counsel promptly provided to the Complainant.

The Custodian contended that there was no unlawful denial of access in this matter. The Custodian asserted that the BOE responded to the subject OPRA request in a timely manner and disclosed the only record in existence at the time of the OPRA request. The Custodian noted that Complainant's Counsel later cited to Burnett, 415 N.J. Super. 506 in a December 20, 2017 letter; however, said case is distinguishable. The Custodian argued that there, the court required defendants to obtain records from their insurance carrier or attorney. The Custodian noted that the court recognized that those parties were acting as "agents" for defendants and that the custodian had an obligation to obtain records from them for disclosure. The Custodian argued that here, the BOE reached out to its "agent" and obtained the Order for disclosure. The Custodian noted that the only agency that maintained the complete Order was the Superior Court. The Custodian argued that Burnett did not require the BOE to reach out to parties that are not "agents" of it.

The Custodian asserted that the instant complaint is more on point with Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 38 (App. Div. 2005). The Custodian argued that as in

Bent, the BOE was not required to search for responsive records beyond its own files: “To the extent that Bent’s request was for records that either *did not exist or were not in the custodian’s possession*, there was, necessarily, *no denial of access at all*.” Id. at 38 (emphasis added). See also Bailey v. Dep’t of Agriculture, GRC Complaint No. 2003-116 (March 2004);<sup>7</sup> Johnson v. Montclair Bd. of Educ. (Essex), GRC Complaint No. 2011-213 (July 2012). The Custodian reiterated that here, the BOE disclosed the only Order it possessed, which was also incomplete. The Custodian further asserted that, with help from Mr. Shanaberger, the BOE corrected this issue on December 28, 2017.

The Custodian further argued that the BOE was not attempting to hide the settlement amount. The Custodian noted that the Board adopted a resolution on July 11, 2016 that contained the amount. The Custodian further averred that, although not part of the subject OPRA request, Custodian’s Counsel provided the resolution to Complainant’s Counsel as an attachment to his December 27, 2017 letter.

Finally, the Custodian argued that the Complainant was not a prevailing party entitled to an award of attorney’s fees. The Custodian first argued that there was no unlawful denial of access here. The Custodian next argued that the responsive records were already disclosed. The Custodian also argued that legal fees were denied the Council found that a custodian’s actions were not knowing and willful in nature. Dalal v. Cnty. of Bergen, GRC Complaint No. 2016-116 (October 2017).<sup>8</sup>

#### Additional Submissions:

On January 30, 2018, Complainant’s Counsel submitted a letter brief rebutting the SOI. Therein, Counsel argued that it was undisputed that the Order originally disclosed was incomplete. Counsel further argued that it was undisputed that the complete Order was finally disclosed on December 28, 2017. Counsel asserted that the Complainant was a prevailing party because 1) this complaint was the catalyst for disclosure; and 2) the disclosure had a basis in law. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 73-76 (2008).

Complainant’s Counsel refuted Custodian Counsel’s December 28, 2017 arguments on the issue, noting that this complaint was distinguishable from Verry v. West Milford Bd. of Educ. (Passaic), GRC Complaint No. 2014-376 (September 2015) (holding that the complainant was not a prevailing party because the evidence of record suggested that custodian began responding to the subject request prior to the Denial of Access Complaint). Counsel argued that here, the BOE asserted that no pages were missing, which prompted this complaint and the subsequent disclosure. Further, Counsel argued that the BOE should have possessed the entire Order all along (citing Verry v. Franklin Fire Dist. No. 1, 230 N.J. 285, 303 (2017)).

On February 5, 2018, Custodian’s Counsel submitted a letter brief attaching a legal certification from Ms. Thomas. Counsel averred that at the time of disclosure, Ms. Thomas believed she disclosed the Order in its entirety. Thomas Cert. at ¶ 3. Counsel thus argued that the

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<sup>7</sup> Affirmed on appeal. Bailey v. N.J. Dep’t of Treasury, Docket No. A-44976-03T5 (App. Div. 2005).

<sup>8</sup> The GRC notes that it did not address the prevailing party fee issue in Dalal, GRC 2016-116 because the complainant was not represented.

BOE could not have violated OPRA by providing the sole record in its possession, nor did the BOE have an obligation to maintain the Order at all. Counsel thus argued that the Complainant was not a prevailing party here.

Counsel further averred that the Complainant's focus lies with the settlement amount, which was contained within a BOE resolution already provided to Complainant's Counsel on December 27, 2017. Counsel contended that disclosure of the missing page achieved no purpose because the settlement amount was already publicly available. Counsel argued that the ultimate disclosure had no basis in law because the BOE disclosed the only Order in its (and Mr. Shanaberger's) possession. Counsel also argued that, contrary to Complainant Counsel's assertions, Mason, 196 N.J. 51 supports that the Complainant is not a prevailing party. Counsel argued that the Complainant failed to show any violation of OPRA, nor did the complaint bring about a change in the Custodian's conduct. Counsel asserted that to the contrary, the BOE voluntarily took steps to obtain a complete copy of the Order through the Superior Court and provided it promptly upon receipt. Counsel also argued that this case is like Verry, GRC 2014-376 in that the BOE continued to work on obtaining the entire Order once alerted to the deficiency.

### 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.

In Bent, 381 N.J. Super. 30,<sup>9</sup> the subject request sought, in part, records regarding a criminal investigation conducted by respondent, as well as the U.S. Attorney General's Office and the Internal Revenue Service. The custodian denied access to certain records, and appellant filed a Denial of Access Complaint. Appellant subsequently appealed the Council's decision holding that no unlawful denial of access occurred. The court affirmed the Council's decision, holding that

[T]o the extent Bent's request was for records that either did not exist or were not in the custodian's possession, there was, of necessity, no denial of access at all . . . Of course, even if the requested documents did exist, the custodian was under no obligation to search for them beyond the township's files.

[Id. at 38.]

Conversely, 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

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<sup>9</sup> Affirmed on appeal regarding Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004). The court also determined that appellant's request was invalid in part. Id. at 39.  
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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 distinguished Bent, holding that:

We find the circumstances presented in Bent to be far removed from those existing in the present matter because, as we have previously concluded, the settlement agreements at issue here were “made” by or on behalf of the Board in the course of its official business. Were we to conclude otherwise, a governmental agency seeking to protect its records from scrutiny could simply delegate their creation to third parties or relinquish possession to such parties, thereby thwarting the policy of transparency that underlies OPRA. N.J.S.A. 47:1A-1.

[Id. at 517.]

Also, in DiCampli v. N.J. State Police, GRC Complaint No. 2013-338 (July 2014), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian’s certification that all such records were provided to the complainant. The Council further held that the custodian’s certification, in addition to the lack of refuting evidence, was sufficient to meet the custodian’s burden of proof. (Citing Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005)). Also, the Council held that it had no authority over the content of the record provided (citing N.J.S.A. 47:1A-7(b); Kwanzaa v. Dep’t of Corrections, GRC Complaint No. 2004-167 (March 2005)).

In the instant complaint, the Complainant averred that the BOE violated OPRA by failing to provide him with a complete copy of the requested Order. In the SOI, the Custodian certified that the record provided via e-mail on November 13, 2017 was the record received from Mr. Shanaberger. The Custodian further certified that Mr. Shanaberger realized his copy of the Order was incomplete and obtained a completed version from the Surrogate’s Office. The Custodian finally certified that after Mr. Shanaberger obtained the complete copy, Counsel sent it to the Complainant on December 28, 2017. The Custodian argued that there was no unlawful denial of access because the BOE disclosed the record it maintained at the time of the OPRA request.

It is factually indisputable that the Order initially disclosed was incomplete. It is further clear that Mr. Shanaberger confirmed that the only copy he possessed was the incomplete copy. Additionally, the BOE and Mr. Shanaberger endeavored to obtain a complete copy from the Superior Court, Ocean County Clerk’s Office. Also, the BOE disclosed the complete Order to the Complainant on December 28, 2017, after the filing of this complaint. Thus, the crux of this complaint rests on whether the Custodian committed a violation of OPRA by not obtaining and disclosing the complete Order.

In reviewing the facts above, the GRC is persuaded that this complaint is on point with Bent and distinguishable from Burnett. As the custodian in Bent was not required to search outside her files, neither the BOE nor Mr. Shanaberger were required to contact the court to obtain a complete copy to satisfy the subject OPRA request. Whether the BOE or Mr. Shanaberger should have maintained the complete Order in the first place is of no moment. The evidence of record



supports that Ms. Thomas disclosed the Order that Mr. Shanaberger maintained, and no other record existed. Further, the BOE's actions did not run afoul of the court's hold in Burnett. Rather, said actions were consistent with the framework set forth by the court. The Custodian did not possess the Order; thus, he contacted Mr. Shanaberger for a copy so that he may disclose it to the Complainant. Ultimately, the evidence of record supports a finding consistent with Bent and DiCampli.

Accordingly, the Custodian did not unlawfully deny access to the requested Order. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the BOE disclosed the only record that existed at the time. DiCampli, GRC 2013-338. Additionally, the Custodian was under no obligation to contact the courts to obtain a copy of the complete Order so as to satisfy the subject OPRA request. Bent, 381 N.J. Super. 30.

### **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 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 (7<sup>th</sup> 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, [certif. denied] (1984).

[Id. at 76.]

The Complainant filed the instant complaint asserting that the Custodian failed to provide him with a complete copy of the request Order. Specifically, the Complainant argued that the Order was clearly incomplete because pages were missing. The Complainant also noted that he attempted to bring this to the BOE's attention before filing the complaint, to no avail. Conversely, the Custodian argued that the record initially disclosed was the only version of the Order that the BOE, through Mr. Shanaberger, possessed. The Custodian later certified to this fact in the SOI. The Custodian also certified that Mr. Shanaberger obtained the complete copy from the Surrogate's Office and Custodian's Counsel disclosed same on December 28, 2017.

However, there was no unlawful denial of access here. First, the BOE disclosed the only record in their possession to the Complainant prior to the filing of this complaint, which happened to be incomplete. DiCampli, GRC 2013-338. Second, neither the Custodian, Counsel, or Mr.

Shanaberger were obligated to contact the Superior Court in order to obtain an Order that would satisfy the subject OPRA request. Bent 381 N.J. Super. at 38. For these reasons, there is no casual nexus between this filing and the relief achieved because it did not have a basis in law: the Custodian was not required to search “beyond the [BOE’s] files.” Bent, 381 N.J. Super. at 38.

Therefore, 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. 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. 51. Specifically, the Custodian provided the only Order that existed at the time of the of the Complainant’s OPRA request, which was incomplete. Further, the Custodian was not required to obtain the completed copy from the Superior Court, Ocean County Clerk’s Office in order to satisfy the request. Bent, 381 N.J. Super. 30. Therefore, the Complainant is not 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.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the requested Order. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the BOE disclosed the only record that existed at the time. DiCampli v. N.J. State Police, GRC Complaint No. 2013-338 (July 2014). Additionally, the Custodian was under no obligation to contact the Superior Court, Ocean County Clerk’s Office to obtain a copy of the complete Order so as to satisfy the subject OPRA request. Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 38 (App. Div. 2005).
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, 387 N.J. Super. 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. 51. Specifically, the Custodian provided the only Order that existed at the time of the of the Complainant’s OPRA request, which was incomplete. Further, the Custodian was not required to obtain the completed copy from the Superior Court, Ocean County Clerk’s Office in order to satisfy the request. Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 38 (App. Div. 2005). Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), and Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008).

Prepared By: Frank F. Caruso  
Executive Director

August 20, 2019