

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

PHILIP D. MURPHY
Governor

Ommunity Affairs

Lt. Governor Sheila Y. Oliver Commissioner

#### FINAL DECISION

# August 25, 2020 Government Records Council Meeting

Rotimi Owoh, Esq. (o/b/o African American
Data & Research Institute)
Complainant
v.
East Greenwich Township (Gloucester)
Custodian of Record

Complaint No. 2019-19

At the August 25, 2020 public meeting, the Government Records Council ("Council") considered the August 18, 2020 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 the:

- 1. The evidence of record supports that Stephanie McCaffrey never received the Complainant's OPRA request on behalf of the Custodian, and the Complainant's evidence is insufficient to overcome Ms. McCaffrey's Statement of Information certification. Thus, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. See Martinez v. Morris Cnty. Prosecutor's Office, GRC Complaint No. 2014-2 (September 2014), and Valdes v. N.J. Dep't of Educ., GRC Complaint No. 2012-19 (April 2013).
- 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. <u>Teeters v. DYFS</u>, 387 <u>N.J. Super.</u> 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. <u>Mason v. City of Hoboken and City Clerk of the City of Hoboken</u>, 196 <u>N.J.</u> 51, 76 (2008). Specifically, there was no unlawful denial of access prior to the complaint filing since Stephanie McCaffrey and the Custodian did not receive the Complainant's OPRA request. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. <u>See N.J.S.A.</u> 47:1A-6, <u>Teeters</u>, 387 <u>N.J. Super.</u> at 432, and <u>Mason</u>, 196 <u>N.J.</u> 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 25<sup>th</sup> Day of August 2020

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 27, 2020** 

# STATE OF NEW JERSEY GOVERNMENT RECORDS COUNCIL

# Findings and Recommendations of the Executive Director August 25, 2020 Council Meeting

Rotimi Owoh, Esq. (On Behalf of <sup>1</sup> African American Data and Research Institute) Complainant GRC Complaint No. 2019-19

v.

East Greenwich Township (Gloucester)<sup>2</sup> Custodial Agency

**Records Relevant to Complaint:** Electronic copies via e-mail of:

- 1. Records Retention and Disposition Scheduled used by the East Greenwich Township Police Department ("EGPD") during the following time periods:
  - January 2016 through December 2016
  - January 2017 through December 2017
  - January 2018 through December 2018
- 2. Records Retention and Disposition Police and Directives used by EGPD during the period set forth in Item No. 1 above.
- 3. Standard Operating Procedure ("SOP") for Records Retention and Disposition used by EGPD during the period set forth in Item No. 1 above.
- 4. Agreement between East Greenwich Township ("Township") and the storage facility or other record showing the address of the location where the Township stores summonses and complaints for fifteen (15) years as required by the attached Records Retention and Disposition Schedule.
- 5. SOP, Manual and Directives relating to the use of eCDR by EGPD.
- 6. Name, title, position and date of hire of each individual within EGPD who has access to eCDR.
- 7. "Arrest Card File" from January 2017 through November 2018.
- 8. "Summonses Log Book" from January 2017 through November 2018.

Custodian of Record: Susan M. Costill Request Received by Custodian: N/A Response Made by Custodian: N/A

GRC Complaint Received: January 30, 2019

<sup>&</sup>lt;sup>1</sup> The Complainant represents the African American Data and Research Institute.

<sup>&</sup>lt;sup>2</sup> Represented by Mark B. Shoemaker, Esq., of the Law Office of Mark B. Shoemaker, LLC (Woodbury, N.J.). Rotimi Owoh, Esq. (On Behalf of African American Data and Research Institute) v. East Greenwich Township (Gloucester), 2019-19 – Findings and Recommendations of the Executive Director

# **Background**<sup>3</sup>

# Request and Response:

On November 17, 2018, the Complainant submitted an Open Public Records Act ("OPRA") request to Stephanie McCaffrey, Deputy Clerk for the Township, seeking the abovementioned records.

### **Denial of Access Complaint:**

On January 30, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he submitted his OPRA request on November 17, 2018. The Complainant asserted that as of January 29, 2019, the Custodian has not provided any records. The Complainant included a copy of the e-mail containing the OPRA request.

The Complainant requested that the Council compel compliance with his OPRA request, and to award counsel fees.

### Statement of Information:

On March 5, 2019, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she did not receive the Complainant's OPRA request dated November 17, 2018. The Custodian certified that as a result no search was undertaken, and no response was provided.

The Custodian further certified that it was unusual for an OPRA request to be sent directly to the Deputy Clerk but has happened on occasion. The Custodian certified that when such an event happens, she would be notified immediately. The Custodian certified that Ms. McCaffrey did not notify her of any OPRA request she received from the Complainant dated November 17, 2018. The Custodian certified that since the Township was involved in litigation with the Complainant at the time, she would have immediately forwarded a request from the Complainant to Custodian's Counsel.

The Custodian also included a certification from Ms. McCaffrey. Therein, Ms. McCaffrey certified that she had no recollection of receiving the e-mail containing the OPRA request. Ms. McCaffrey certified that she searched her account using a variety of terms, including the date of the alleged transmittal and days immediately before and after, but could not locate the e-mail. Ms. McCaffrey also certified that she reached out to the Township's IT Administrator to search for the e-mail in case it was blocked by the Township's security software. Ms. McCaffrey certified that she was told that the e-mail was not blocked by a filter. Ms. McCaffrey also certified that the e-mail provided by the Complainant did not appear like the e-mail containing an earlier OPRA request sent to the Township in October 2018.

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<sup>&</sup>lt;sup>3</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.

The Custodian, through Counsel, noted that the OPRA request at issue was related to a separate OPRA request that was the subject of <u>AADARI v. East Greenwich Twp.</u>, Dkt. No. GLO-L-1309-18 ("Litigation"). Counsel asserted that despite representing the Township in the Litigation, the Complainant failed to provide him with a copy of the request or bring to his attention that a related OPRA request was outstanding. Counsel also asserted that the Complainant failed to notify his office prior to filing the instant complaint.

Counsel asserted that in addition to dismissal, the Township requested counsel fees incurred from responding to the instant complaint.<sup>4</sup>

#### Additional Submissions:

On March 7, 2019, the Complainant filed a letter brief in opposition to the Custodian's SOI. Therein, the Complainant first argued that the provided copy of his e-mail demonstrated that the request was sent to the Township on November 17, 2018 at 4:35 a.m. The Complainant asserted that if the e-mail was not delivered, then Comcast, his e-mail provider, would automatically send a message stating that the e-mail was "undeliverable." The Complainant noted that the e-mail address he used to send the instant OPRA request was the same used by the Township to respond to an earlier OPRA request, was posted on the Township's website, and was used to notify the Township of a complaint filing in Superior Court. The Complainant therefore argued that there was no reasonable question that the OPRA request was sent to the correct e-mail address.

The Complainant maintained that as of March 7, 2019, the Custodian has not responded to his request. The Complainant also noted that the instant complaint was sent to the Township via the same e-mail address, but still has not received any responsive records.

The Complainant asserted that it would be improper to dismiss the complaint as the Custodian has yet to make records available to same. The Complainant noted that the Litigation referenced by Counsel has been updated, attaching an order dated March 1, 2019. The Complainant asserted that the order found in his favor and that he was a prevailing party.

The Complainant requested the Council compel compliance with the OPRA request to award counsel fees pursuant to <u>Teeters v. DYFS</u>, 387 <u>N.J. Super.</u> 423 (App. Div. 2006). The Complainant included a copy of an unrelated order to indicate his hourly rate.

On March 7, 2019, Counsel submitted correspondence in response to the Complainant's reply brief. Counsel asserted that while he did not have a basis to dispute the Complainant's claim that he did not receive an "undeliverable" error message from Comcast, Counsel noted that it was his practice to utilize options that provide proof of delivery as well as provide the recipient with the option to acknowledge they "read" a given e-mail. Counsel also stated that he would also request the recipient respond to his e-mail to confirm receipt. Counsel asserted that the Complainant did not apply any of these options and that the Township stood by the certifications from the Custodian and Ms. McCaffrey.

<sup>&</sup>lt;sup>4</sup> The Custodian, through Counsel, requested that the GRC explore the possibility of allowing the Township to seek fees and costs from the Complainant for frivolous litigation. The GRC notes that OPRA's fee shifting provision only applies to complainants. N.J.S.A. 47:1A-6.

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Counsel asserted that the Township did not contend that the Complainant did not send an e-mail or used an incorrect e-mail address. Counsel argued that sending an e-mail did not constitute service unless the e-mail was in fact received. Counsel asserted that the Complainant made no attempt to confirm receipt of the e-mail either through the Township or with communication with Counsel.

Counsel asserted that Ms. McCaffrey informed him that she did not receive an e-mail containing the instant complaint. Counsel asserted that like the e-mail containing the OPRA request at issue, the IT Administrator for the Township confirmed that the e-mail containing the instant complaint did not reach the server nor was it filtered by any software or hardware.

Counsel also noted that in the Litigation, the Complainant made a similar claim of sending an e-mail to Counsel, and later asserted that no response was received. Counsel contended that he never received that particular e-mail despite receiving other e-mails from the Complainant without issue. Counsel argued that given that he did not share a computer or computer services with the Township, the issue may lie on the Complainant's end, in which e-mails he claimed to have sent were not leaving his system.

Counsel noted that while the Litigation order required the Township to produce records, the legal issues were irrelevant to the current matter. Counsel added that notwithstanding the production order, the Township was litigating the imposition of a special service charge as well as challenging the attorney fee amount. Counsel asserted that the Complainant committed repeated violations of the Rules of Professional Conduct in falsifying his records.

Counsel asserted that the matter should be dismissed since the Township had yet to be properly served with the OPRA request.

On March 9, 2019, the Complainant filed a response to Counsel. The Complainant asserted that OPRA allows for requests to be submitted via e-mail, and therefore the Township was properly served with the request at issue. See Dello Russo v. City of East Orange (Essex), GRC Complaint No. 2014-260 (June 2014).

The Complainant also asserted that he properly submitted the OPRA request to the Township, and there was no requirement under OPRA to send requests to a township's solicitor. The Complainant attached correspondence from Counsel's co-counsel in the related Litigation and asserted that co-counsel told him to submit OPRA requests directly to the municipal clerk. The Complainant also noted that Counsel told him in January 2019 to not send him any more e-mail correspondence.

Regarding Counsel's reference to the related Litigation, the Complainant noted that the court recently awarded counsel fees in the amount of \$4,800.00 in <u>AADARI v. City of Bridgeton</u>, Dkt. No. CUM-L-0745-18, and \$5,424.00 in <u>AADARI v. City of Millville</u>, Dkt. No. CUM-L-0712-18<sup>5</sup>. The Complainant also asserted that Counsel has had issues receiving electronic

<sup>&</sup>lt;sup>5</sup> The Appellate Division recently reversed the trial court in <u>Simmons v. Mercado</u>, 2020 <u>N.J. Super.</u> LEXIS 125 (App Div. June 11, 2020).

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correspondence himself and attached correspondence from Counsel claiming not to have received notices from the New Jersey Judiciary's e-filing system.

The Complainant reiterated his request to deny the Township's request for dismissal and compel compliance with the OPRA request. The Complainant also restated his request for counsel fees as a prevailing party.

On March 11, 2019, Counsel submitted a response to the Complainant. Counsel attached a copy of an e-mail he received from Robert Icona, Chief Technology Officer for the Kingsway Regional School District, which provided e-mail services for the Township. Counsel asserted that the e-mail contained a screenshot of an automated response dated January 29, 2019 that was sent to the Complainant, stating: "Your message wasn't delivered to anyone because it's too large. The limit is 19MB. Your message is 24MB." Counsel argued that the Complainant therefore knew that the e-mail containing the instant complaint was rejected but continued move forward with adjudication.

Counsel asserted that if the Complainant still wanted the records the Council could allow the Complainant to submit a new OPRA request to the Township. Counsel also asserted that in the alternative the Council could set a date in which the Township would have constructive receipt of the current OPRA request and allow proper time to respond. Counsel maintained that the Township was unaware of the OPRA request at issue until the GRC served the instant complaint.

On March 12, 2019, the Complainant submitted a response to the Custodian. The Complainant asserted that he has already provided a copy of the message sent to Ms. McCaffrey without any receipt of an error message. The Complainant asserted that Comcast would normally provide an error message if one had occurred. The Complainant also asserted that no error message was received from Comcast after submitted the instant complaint Ms. McCaffrey as well.

Later that same day, Counsel responded to the Complainant stating that the delivery issues were not related to messages sent by Comcast. Counsel asserted that the Complainant's e-mail was rejected at the receiving end via the e-mail server utilized by the Township.

On April 23, 2019, Counsel submitted additional correspondence to the GRC, asserting that the court overseeing the Litigation recently issued final rulings that cut the requested fee award by 60% and approved the Township's imposition of a special service charge.

#### **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.

OPRA further provides that, "a request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian." N.J.S.A. 47:1A-5(g). OPRA further provides that, "the council shall make a determination as to whether the complaint is within its jurisdiction or frivolous or *without any reasonable factual basis.*" N.J.S.A. 47:1A-7(e) (emphasis added).

In <u>Martinez v. Morris Cnty. Prosecutor's Office</u>, GRC Complaint No. 2014-2 (September 2014), the complainant contended that the custodian should have received his OPRA request and provided a photocopy of the certified mail receipt as evidence. The certified mail receipt identified the date of delivery and confirmed that the address was correct. The Council held that the certified mail receipt was insufficient to show that the custodian received the request.

Furthermore, in <u>Valdes v. N.J. Dep't of Educ.</u>, GRC Complaint No. 2012-19 (April 2013), the complainant filed a complaint after not receiving a response to his OPRA request. As part of his Denial of Access Complaint, the complainant included a certified mail receipt stamped "State of NJ – Capital Post Office." The Council determined that the custodian did not unlawfully deny access to the complainant's OPRA request because same was never received. The Council reasoned that "the Custodian did not sign the receipt and there is no indication that [the Department of Education] received the request, only that the State received it . . . it is entirely possible that the Custodian never received the OPRA request." <u>Id. See also Bey v. State of New Jersey, Office of Homeland Security & Preparedness</u>, GRC Complainant No. 2013-237 (February 2014) (complainant's certified mail return receipt sufficient only to show that the State received the request, not the custodian).

In the instant matter, the Complainant contended that he submitted his OPRA request to Ms. McCaffrey on November 18, 2018 and provided a copy of his e-mail indicating same. The Complainant also argued that if the message was not delivered properly, his e-mail provider would have sent an error message indicating same. Ms. McCaffrey certified that she did not receive the Complainant's e-mail containing OPRA request, else she would have forwarded the message to the Custodian. Ms. McCaffrey certified that she searched her e-mail account using several search terms and included days shortly before and after the asserted transmittal date. Counsel contended that the Complainant's e-mail copy did not demonstrate that the e-mail containing the OPRA request was received, only that it was transmitted.

The facts in this matter are analogous to those in Martinez, GRC 2014-2 and Valdes, GRC 2012-19. Like the certified mail receipts, the Complainant's e-mail copy is evidence that the e-mail was sent to the correct address but does not confirm that Ms. McCaffrey received the e-mail on her server. Furthermore, the fact that the Complainant did not receive an error message after sending the email is not sufficient proof that Ms. McCarthy ultimately received the email. It should also be noted that the error message provided by Counsel indicates that the maximum size allowed for e-mail attachments was 19MB. While the error message was in relation to the Complainant's transmittal of the Denial of Access Complaint, it raises additional doubts that the Complainant's OPRA request was successfully transmitted, since the attachment size containing same was 22MB. Thus, the Complainant's evidence is insufficient to overcome Ms. McCaffrey's certification that she could not find the e-mail containing the Complainant's OPRA request after searching through her e-mail account.

Therefore, the evidence of record supports that Ms. McCaffrey never received the Complainant's OPRA request on behalf of the Custodian, and the Complainant's evidence is insufficient to overcome Ms. McCaffrey's SOI certification. Thus, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. See Martinez, GRC 2014-2, and Valdes, GRC 2012-19.

# **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 <u>Teeters</u>, 387 <u>N.J. Super.</u> 423, the Appellate Division 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. <u>Id.</u> 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. <u>Id.</u>

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, 71 (2008), the Court discussed the catalyst theory, "which posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct"(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 held that the phrase "prevailing party" is a legal term of art that refers to a "party in whose favor a judgment is rendered." Id. at 603 (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 <u>Mason</u> that <u>Buckhannon</u> is binding only when counsel fee provisions under federal statutes are at issue. 196 <u>N.J.</u> at 72, <u>citing Teeters</u>, 387 <u>N.J. Super.</u> at 429; <u>see</u>, *e.g.*, <u>Baer v. Klagholz</u>, 346 <u>N.J. Super.</u> 79 (App. Div. 2001) (applying <u>Buckhannon</u> to the federal Individuals with Disabilities Education Act), <u>certif. denied</u>, 174 <u>N.J.</u> 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 <u>Mason</u> 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.

[196 N.J. at 73-76.]

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." <u>Singer v. State</u>, 95 <u>N.J.</u> 487, 495, cert. denied, <u>New Jersey v. Singer</u>, 469 <u>U.S.</u> 832 (1984).

[<u>Id.</u> at 76.]

The Complainant filed the instant complaint requesting that the GRC require the Custodian to obtain and disclose the requested records to him. However, the evidence of record indicates that neither Ms. McCaffrey nor the Custodian received the Complainant's OPRA request prior to receiving notice of the Denial of Access Complaint. Thus, as there was no unlawful denial of access prior to the complaint filing, the Complainant has not achieved the desired result and is not a prevailing party in this complaint.

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. <u>Teeters</u>, 387 <u>N.J. Super.</u> at 432. Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. <u>Mason</u>, 196 <u>N.J.</u> at 76. Specifically, there was no unlawful denial of access prior to the complaint filing since Ms. McCaffrey and the Custodian did not receive the Complainant's OPRA request. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. <u>See N.J.S.A.</u> 47:1A-6, <u>Teeters</u>, 387 <u>N.J. Super.</u> 432, and <u>Mason</u>, 196 <u>N.J.</u> 51.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

- 1. The evidence of record supports that Stephanie McCaffrey never received the Complainant's OPRA request on behalf of the Custodian, and the Complainant's evidence is insufficient to overcome Ms. McCaffrey's Statement of Information certification. Thus, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. See Martinez v. Morris Cnty. Prosecutor's Office, GRC Complaint No. 2014-2 (September 2014), and Valdes v. N.J. Dep't of Educ., GRC Complaint No. 2012-19 (April 2013).
- 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, there was no unlawful denial of access prior to the complaint filing since Stephanie McCaffrey and the Custodian did not receive the Complainant's OPRA request. 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. at 432, and Mason, 196 N.J. at 76.

Prepared By: Samuel A. Rosado Staff Attorney

August 18, 2020