



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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FINAL DECISION

July 30, 2008 Government Records Council Meeting

John Paff
Complainant

Complaint No. 2008-38

v.

Borough of Sussex (Sussex)
Custodian of Record

At the July 30, 2008 public meeting, the Government Records Council (“Council”) considered the July 23, 2008 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of the amended findings and recommendations. The Council, therefore, finds that:

1. Although the Custodian responded in writing granting access to the requested record in a timely manner pursuant to N.J.S.A. 47:1A-5.i., the Custodian’s response is insufficient because she failed to specifically address the Complainant’s preference for receipt of records. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and O’Shea v. Township of Fredon (Sussex), GRC Complaint No. 2007-251 (February 2008).
2. Sussex Borough’s policy of mailing records does not supersede OPRA pursuant to Dittrich v. City of Hoboken, GRC Complaint No. 2007-73 (October 2007). *See also: Renna v. County of Union*, GRC Complaint No. 2004-136 (July 2005); N.J.S.A. 47:1A-1 (“any limitations on the right of access... should be construed in favor of the public’s right of access.”)
3. While the Custodian may not have had the ability to scan and e-mail the requested record at the time of the request, the Custodian still had the ability to transmit documents via facsimile. Because the Custodian had the proper means to produce the requested paper record via facsimile, the Custodian has violated N.J.S.A. 47:1A-5.d.
4. Although the Custodian’s response was insufficient, the Custodian did provide the requested record in a timely manner. Therefore, it is concluded that 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. However, the Custodian’s actions appear to be negligent and



heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

5. While the Custodian in this complaint committed a technical violation of OPRA by responding insufficiently to the Complainant's January 11, 2008 OPRA request and by failing to provide the record in the medium requested, the Custodian released the record prior to the filing of this complaint. Additionally, the GRC declines to order disclosure of the record via facsimile as requested by the Complainant because the Custodian released the requested record in a timely manner. The Complainant has therefore failed to achieve the desired result because the complaint did not bring about a change (voluntary or otherwise) in the Custodian's conduct, as required by the definition of "prevailing party" set forth in Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee under N.J.S.A. 47:1A-6.

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 30th Day of July, 2008

Robin Berg Tabakin, Chairman
Government Records Council

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

David Fleisher, Secretary
Government Records Council

Decision Distribution Date: August 4, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 30, 2008 Council Meeting**

John Paff¹
Complainant

GRC Complaint No. 2008-38

v.

Borough of Sussex²
Custodian of Records

Records Relevant to Complaint: The civil complaint in Vopone v. Sussex Borough, Docket No. SSX-L-786-07. The Complainant requests that the Custodian provide the records via facsimile or e-mail instead of U.S. Postal Service.

Request Made: January, 8 2008; January 11, 2008

Response Made: January 9, 2008; January 14, 2008

Custodian: Catherine Gleason

GRC Complaint Filed: February 25, 2008

Background

January 8, 2008

Complainant's initial Open Public Records Act ("OPRA") request. The Complainant requests the record relevant to this complaint listed above on an official OPRA request form via e-mail.³

January 9, 2008

Anni L. Warfield's Response to the OPRA request.⁴ Ms. Warfield responds in writing via facsimile to the Complainant's OPRA request on the first (1st) business day following receipt of such request. Ms. Warfield requests that the Complainant complete the attached Borough of Sussex ("Borough") OPRA request form. Ms. Warfield further states the Borough will inform the Complainant of the cost and upon receipt of payment will provide the requested record via U.S. Mail.

January 11, 2008

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the record relevant to this complaint listed above on the Borough's official OPRA request form via e-mail.

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

² Represented by John E. Ursin, Esq. (Sparta, NJ).

³ The Complainant modified the GRC's model OPRA request form.

⁴ Anni L. Warfield is an administrative assistant working for the Borough of Sussex.
John Paff v. Borough of Sussex, 2008-38 – Findings and Recommendations of the Executive Director

The Complainant states that he endeavored to locate a Borough OPRA request form prior to filing his January 8, 2008 OPRA request to the Custodian, but failed to locate a website for the Borough. The Custodian further states that he modified the model request form found on the GRC's website because he could not locate the Borough of Sussex's OPRA request form. The Complainant states that he has two (2) questions regarding Ms. Warfield's January 9, 2008 response.

The Complainant states that he realizes GRC Advisory Opinion 2006-1 requires that the Custodian only accept the Borough's specific OPRA request form, but asserts that requiring a requestor to resubmit a substantially similar form is inefficient, especially when the Borough does not maintain a website and when the requestor lives far from the Borough of Sussex and cannot easily visit the Borough's office. The Complainant asks whether the Borough would consider as policy accepting OPRA requests submitted on the GRC's model request form in addition to those submitted on the Borough's official OPRA request form.

The Complainant also states that he specifically requested that the record be transmitted via facsimile or e-mail instead of regular mail, but Ms. Warfield responded stating that the records would be mailed via U.S. Mail. The Complainant asks why the Custodian cannot abide by his preferences even though the Custodian has both an e-mail address and facsimile capability.

January 14, 2008

Custodian's Response to the OPRA request. The Custodian responds in writing via e-mail to the Complainant's OPRA request on the first (1st) business day following receipt of such request. The Custodian states that she received the Complainant's January 11, 2008 e-mail with the attached OPRA request. The Custodian states that the cost for the requested record is \$7.50. The Custodian states that the record will be sent to the Complainant upon receipt of payment.

January 14, 2008

E-mail from the Complainant to the Custodian. The Complainant states that a check for \$7.50 has been mailed to the Custodian.

The Complainant states that the Custodian has failed to respond to both of his questions posed in the Complainant's January 11, 2008 e-mail. The Complainant states that the second question is especially important because the Complainant will be away from home for an extended period of time and there will be a substantial delay in receiving mail while e-mails and facsimiles will be received more quickly.

January 14, 2008

E-mail from the Custodian to the Complainant. The Custodian states that the requested records will be mailed as per the Borough's procedure. The Custodian advises that the Complainant may provide a different address to the Custodian.

February 25, 2008

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

- Complainant’s initial OPRA request dated January 11, 2008.
- E-mail from the Custodian to the Complainant dated January 14, 2008.
- E-mail from the Complainant to the Custodian dated January 14, 2008.
- E-mail from the Custodian to the Complainant dated January 14, 2008.
- The Press of Atlantic City v. Greater Egg Harbor Regional High School District, Docket No. ATL-L-430-05.

The Complainant’s Counsel asserts that the Complainant has filed this Denial of Access Complaint because the Custodian has refused to provide the requested record via e-mail or by facsimile, contrary to the Complainant’s January 11, 2008 OPRA request. The Complainant’s Counsel asserts that on January 11, 2008, the Complainant filed an OPRA request on the Borough’s official OPRA request form. The Complainant’s Counsel further asserts that the Complainant asked why the Custodian had chosen to send the records responsive to the Complainant via U.S. Mail, instead of either e-mail or facsimile. The Complainant’s Counsel asserts that the Custodian responded on January 14, 2008 and failed to address the Complainant’s receipt preference by stating that the requested records would be sent by U.S. Mail. The Complainant’s Counsel asserts that the Complainant e-mailed the Custodian again requesting that the records be sent either by e-mail or facsimile. The Complainant’s Counsel asserts that the Custodian responded stating that “[a]s is our procedure we will be sending you the documents that you requested via U.S. Mail.”

The Complainant’s Counsel states that the Borough previously used e-mail and facsimile to interact with the Complainant. The Complainant’s Counsel asserts that the Custodian has violated OPRA by refusing to provide the requested record in the medium requested pursuant to N.J.S.A. 47:1A-5.d.

The Complainant’s Counsel asserts that the issues raised in this complaint are exactly the same issues raised in The Press of Atlantic City v. Greater Egg Harbor Regional High School District, Docket No. ATL-L-430-05. The Complainant’s Counsel states that in that case, the Defendant refused to provide meeting agendas via facsimile or e-mail, even though the Defendant was capable of doing so. The Complainant’s Counsel states that the court held that the Defendant’s failure to provide the meeting agendas via e-mail or facsimile was a violation of OPRA. The Complainant’s Counsel further states that the court held that N.J.S.A. 47:1A-5.d requires that a public agency provide government records in the medium requested, which includes every means reasonably available to that public agency.

The Complainant’s Counsel requests an order:

1. Finding that the Custodian violated [OPRA] and denied access to records by refusing to transmit the requested records in the medium requested by the Complainant.
2. Ordering the Custodian to provide records in the medium in which they are requested.
3. Awarding the Complainant attorneys’ fees as provided by N.J.S.A. 47:1A-6.

The Complainant did not agree to mediate this complaint.

March 5, 2008

E-mail from the Complainant's Counsel to the GRC. The Complainant's Counsel states that pursuant to a telephone conversation, the Complainant's Counsel confirms that the requested record was received by the Complainant on January 17, 2008 via First-Class Mail.

March 26, 2008

Request for the Statement of Information sent to the Custodian.

April 1, 2008

Custodian's Statement of Information ("SOI") with the following attachments:

- Complainant's OPRA request dated January 11, 2008.
- E-mail from the Complainant to Ms. Anni L. Warfield dated January 11, 2008.
- E-mail from the Custodian to the Complainant dated January 14, 2008.
- Yopone v. Sussex Borough, Docket No. SSX-L-786-07.

The Custodian's Counsel states that the Complainant's OPRA request was received on January 11, 2008. The Custodian's Counsel states that the requested record was provided to the Complainant upon receipt of payment on January 17, 2008. The Custodian's Counsel contends that the basis of this complaint is not about failure to provide records, but rather the manner in which the records were provided.

The Custodian's Counsel avers that the Complainant Counsel's reliance on The Press of Atlantic City, an unreported Law Division decision, is not on point. The Custodian's Counsel contends that N.J.S.A. 47:1A-5.d. refers to providing documents in the medium in which the records are maintained, which is substantially different from the delivery method. The Custodian's Counsel asserts that the Borough does not have a website and only limited electronic transmission capabilities. The Custodian's Counsel further asserts that the requested record was not maintained in an electronic medium. The Custodian's Counsel avers that the requested record was a complaint filed against the Borough and that the requested record was not generated by the Borough. The Custodian's Counsel contends that the Custodian complied with OPRA by providing the record in the medium maintained by the Borough.

The Custodian's Counsel further contends that the records were produced in a timely fashion. The Custodian's Counsel asserts that the Borough's policy has been to provide records by U.S. Mail rather than facsimile. The Custodian's Counsel asserts that facsimile transmissions can often have issues such as missing pages or transmission quality. The Custodian's Counsel asserts that the Borough's policy is based on the belief that U.S. mail is more reliable. The Custodian's Counsel finally asserts that N.J.S.A. 47:1A-5.d. does not have an indication that transmission by facsimile is required.

May 6, 2008

E-mail from the GRC to the Custodian. The GRC requests that the Custodian provide additional information to the following:

1. Was the requested record initially received by the Borough in hard copy form?

2. Does the Borough have the ability to scan documents, thus converting them into an electronic file?

May 8, 2008

Letter from the Custodian's Counsel to the GRC attaching an invoice regarding scanning. The Custodian's Counsel states that the requested record was provided to the Borough from the Sheriff's Office in paper form. The Custodian's Counsel further states that the Borough has a scanner, which was not incorporated into the Borough's computer network until March 3, 2008. The Custodian's Counsel states that the attached invoice indicates that a service person gave the municipal employees instructions on scanning.

The Custodian's Counsel finally states that the Borough has had scanning ability, although with limited employee proficiency, only since March 3, 2008.

Analysis

Whether the Custodian unlawfully denied access to the requested record?

OPRA provides that:

"...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*" (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

"... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ..." (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA also states that:

"[a] custodian shall permit access to a government record and provide a copy thereof in the medium requested if the public agency maintains the record in that medium. If the public agency *does not maintain* the record in the medium requested, the custodian *shall either convert* the record to the medium requested or *provide a copy in some other meaningful medium*. If a request is for a record: (1) in a medium not routinely used by the agency; (2) not routinely developed or maintained by an agency; or (3) requiring a substantial amount of manipulation or programming of information technology, the agency may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the agency or attributable to the agency for the programming, clerical,

and supervisory assistance required, or both.” (Emphasis added.) N.J.S.A. 47:1A-5.d.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In O’Shea v. Township of Fredon (Sussex), GRC Complaint No. 2007-251 (February 2008), the Complainant contended that the Custodian’s response to his OPRA request was insufficient because it did not address his preference for e-mailed records over paper copies via regular mail. The GRC held that “[a]ccording to [the] language of N.J.S.A. 47:1A-5.g., the Custodian was given two ways to comply and should have, therefore, responded acknowledging the Complainant’s preferences with a sufficient response for each.” The GRC further held that “the Custodian’s response is insufficient because she failed to specifically address the Complainant’s preference for receipt of records.”

In the instant complaint, the Complainant requested that the records be provided by e-mail or facsimile, and the Custodian failed to address the method of delivery. Although the Custodian responded in writing granting access to the requested record in a timely manner pursuant to N.J.S.A. 47:1A-5.i., the Custodian’s response is insufficient because she failed to specifically address the Complainant’s preference for receipt of the record. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and O’Shea, supra.

Additionally, the Custodian’s Counsel contends that the Borough’s policy of mailing requested records to a requestor is based on the belief that mail is more reliable. In Dittrich v. City of Hoboken, GRC Complaint No. 2007-73 (October 2007), the Custodian made the requested records responsive to the Complainant’s January 18, 2007 OPRA request available for inspection to the Complainant, but the Custodian denied access to copies of the requested records because the Complainant did not follow Hoboken’s policy by refusing to sign a receipt for records provided. The GRC held that “... agency policy does not supersede access to government records required in OPRA.” Therefore, Sussex Borough’s policy of mailing records does not supersede OPRA pursuant to Dittrich, supra. See also, Renna v. County of Union, GRC Complaint No. 2004-136 (July 2005); N.J.S.A. 47:1A-1 (“any limitations on the right of access... should be construed in favor of the public’s right of access.”)

The Complainant's Counsel also contends that the Custodian refused to transmit the requested records in the medium requested, in this instance either facsimile or e-mail. The Custodian's Counsel avers that the court's interpretation of N.J.S.A. 47:1A-5.d. in The Press of Atlantic City v. Greater Egg Harbor Regional High School District, Docket No. ATL-L-430-05, requires that a public agency provide government records in the medium requested, which includes every means reasonably available to that public agency. The Complainant's Counsel finally states that the Custodian does possess both e-mail and facsimile based on earlier correspondence between both the Custodian and Complainant which means that the Custodian should have provided the requested record in the medium requested.

The Custodian's Counsel states that the requested record was delivered to the Custodian in paper form by the Sheriff's Office and that the Borough only received the ability to scan documents on March 3, 2008.

N.J.S.A. 47:1A-5.d. states that a custodian shall permit access to the record requested in the medium requested if the agency maintains the record in that medium. OPRA further gives a custodian the ability to convert a record into some other meaningful medium should the record not be maintained in the requested medium.

In the complaint now before the Council, while the Custodian may not have had the ability to scan and e-mail the requested record at the time of the request, the Custodian still had the ability to transmit documents via facsimile. Because the Custodian had the proper means to produce the requested paper record via facsimile, the Custodian has violated N.J.S.A. 47:1A-5.d.

Whether the Custodian's delay in access to the requested record rises to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

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:

"... If 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 at 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 (Berg); 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 (App. Div. 1996) at 107).

Although the Custodian's response was insufficient, the Custodian did provide the requested record in a timely manner. Therefore, it is concluded that 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. However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

Whether the Complainant is a “prevailing party” pursuant to N.J.S.A. 47:1A-6 and entitled to reasonable 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/she 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.*

In Teeters, the Complainant appealed from a final decision of the Government Records Council which denied an award for attorney's fees incurred in seeking access to certain public records via two complaints she filed under N.J.S.A. § 47:1A-6 and N.J.S.A. § 47:1A-7.f. against the Division of Youth and Family Services (“DYFS”). The records sought involved an adoption agency which falsely advertised that it was licensed in New Jersey. DYFS eventually determined that the adoption agency violated state licensing rules and reported the results of its investigation to the Complainant. The Complainant received the records she requested upon entering into a settlement with

DYFS. The court found that the Complainant engaged in reasonable efforts to pursue her access rights to the records in question and sought attorney assistance only after her self-filed complaints and personal efforts were unavailing. Teeters, supra, 387 N.J. Super. at 432. With that assistance, she achieved a favorable result that reflected an alteration of position and behavior on DYFS's part. *Id.* As a result, the court found that the Complainant was a prevailing party entitled to an award of a reasonable attorney's fee. Accordingly, the court remanded the determination of reasonable attorney's fees to the GRC for adjudication.

While the Custodian in this complaint committed a technical violation of OPRA by responding insufficiently to the Complainant's January 11, 2008 OPRA request and by failing to provide the record in the medium requested, the Custodian released the record prior to the filing of this complaint. Additionally, the GRC declines to order disclosure of the record via facsimile as requested by the Complainant because the Custodian released the requested record in a timely manner. The Complainant has therefore failed to achieve the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct, as required by the definition of "prevailing party" set forth in Teeters, supra. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee under N.J.S.A. 47:1A-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian responded in writing granting access to the requested record in a timely manner pursuant to N.J.S.A. 47:1A-5.i., the Custodian's response is insufficient because she failed to specifically address the Complainant's preference for receipt of records. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5.g. and O'Shea v. Township of Fredon (Sussex), GRC Complaint No. 2007-251 (February 2008).
2. Sussex Borough's policy of mailing records does not supersede OPRA pursuant to Dittrich v. City of Hoboken, GRC Complaint No. 2007-73 (October 2007). *See also: Renna v. County of Union*, GRC Complaint No. 2004-136 (July 2005); N.J.S.A. 47:1A-1 ("any limitations on the right of access... should be construed in favor of the public's right of access.")
3. While the Custodian may not have had the ability to scan and e-mail the requested record at the time of the request, the Custodian still had the ability to transmit documents via facsimile. Because the Custodian had the proper means to produce the requested paper record via facsimile, the Custodian has violated N.J.S.A. 47:1A-5.d.
4. Although the Custodian's response was insufficient, the Custodian did provide the requested record in a timely manner. Therefore, it is concluded that 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. However, the Custodian's actions appear to be negligent and heedless since she is vested with the legal responsibility of granting and denying access in accordance with the law.

5. While the Custodian in this complaint committed a technical violation of OPRA by responding insufficiently to the Complainant's January 11, 2008 OPRA request and by failing to provide the record in the medium requested, the Custodian released the record prior to the filing of this complaint. Additionally, the GRC declines to order disclosure of the record via facsimile as requested by the Complainant because the Custodian released the requested record in a timely manner. The Complainant has therefore failed to achieve the desired result because the complaint did not bring about a change (voluntary or otherwise) in the Custodian's conduct, as required by the definition of "prevailing party" set forth in Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee under N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso
Case Manager

Approved By: Catherine Starghill, Esq.
Executive Director

July 23, 2008