State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

December 18, 2012 Government Records Council Meeting

Michael M. Heyman Complaint No. 2011-249
(On behalf of Lisa Richford)
Complainant
v.
County of Mercer, Office of County Counsel
Custodian of Record

At the December 18, 2012 public meeting, the Government Records Council ("Council") considered the October 23, 2012 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. Although the Custodian responded in writing to the Complainant's OPRA request within statutorily mandated time frame to respond, the Custodian's written response was insufficient pursuant to N.J.S.A. 47:1A-5.i. and Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008) because the Custodian failed to provide an anticipated date upon which she would respond to the Complainant providing the responsive records. *See also* Bentz v. Borough of Paramus (Bergen), GRC Complaint No. 2008-89 (June 2011).

2. Although the Custodian's initial response was insufficient, the Custodian did not unlawfully deny access to the responsive records because she provided same on July 7, 2011. N.J.S.A. 47:1A-6. *See also* Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005)(holding that the custodian met the burden of proving that all responsive records were provided and there was no unlawful denial of access).

3. Although the Custodian's response was insufficient pursuant to N.J.S.A. 47:1A-5.i. because she failed to provide a date certain on which she would respond, the Custodian did not unlawfully deny the Complainant access to the responsive records. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's insufficient response does not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), 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. Additionally, pursuant to

Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian disclosed the responsive records on July 7, 2011, 20 days prior to the filing of this complaint. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*.

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 18th Day of December, 2012

Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: December 20, 2012

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Executive Director
December 18, 2012 Council Meeting

Michael M. Heyman **GRC Complaint No. 2011-249**
(On behalf of Lisa Richford)[1]
Complainant

v.

County of Mercer, Office of County Counsel[2]
Custodian of Records

Records Relevant to Complaint: Copies of trust account records for Mercer County Surrogate Dian Gerofsky ("Surrogate") from 2004 to the date of the OPRA request including but not limited to all expenditures or payables and debits.

Request Made: June 20, 2011
Response Made: June 22, 2011
Custodian: Sarah G. Crowley
GRC Complaint Filed: July 27, 2011[3]

Background

June 20, 2011
Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

June 22, 2011
Custodian's response to the OPRA request. The Custodian responds in writing via letter to the Complainant's OPRA request on the second (2nd) business day following receipt of such request. The Custodian states that her office is compiling the responsive records; however, this process will take more than the statutorily mandated seven (7) business days.[4]

July 7, 2011
Letter from the Custodian to the Complainant (with attachments). The Custodian states that attached are the responsive records.

[1] No legal representation listed on record.
[2] No legal representation listed on record.
[3] The GRC received the Denial of Access Complaint on said date.
[4] The Custodian did not indicate a date certain on which she would respond in writing to the Complainant's OPRA request.

July 27, 2011

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

- Complainant's OPRA request dated June 20, 2011.
- Letter from the Custodian to the Complainant dated June 22, 2011.

The Complainant states that he submitted an OPRA request to the County of Mercer ("County"), Office of County Counsel on June 20, 2011. The Complainant states that the Custodian responded on June 22, 2011 stating that the process of compiling the responsive records would take more than seven (7) business days.

The Complainant does not agree to mediate this complaint.

August 3, 2011

Request for the Statement of Information ("SOI") sent to the Custodian.

August 8, 2011

Custodian's SOI with the following attachments:[5]

- Complainant's OPRA request dated June 20, 2011.
- Letter from the Custodian to the Complainant dated June 22, 2011.
- Letter from the Custodian to the Complainant dated July 7, 2011 (with attachments).

The Custodian certifies that her search for the requested records included reviewing the Complainant's OPRA request and forwarding same to the County Finance Department. The Custodian certifies that she sent a response to the Complainant once the County Finance Department provided the responsive records to the Custodian.

The Custodian also certifies that the last date upon which records that may have been responsive to the request were destroyed in accordance with the Records Destruction Schedule established and approved by Records Management Services is not applicable.

The Custodian certifies that she received the Complainant's OPRA request on June 20, 2011. The Custodian certifies that she responded on June 22, 2011 stating that her office was compiling the responsive records and would need more than the statutorily mandated seven (7) business days to respond. The Custodian certifies that the Complainant's OPRA request sought records for an eight (8) year period and that she maintained none of the responsive records in her office. The Custodian asserts that her request for an extension conforms with the GRC's position that a written response granting access, denying access, seeking clarification or requesting an extension of time within the seven (7) business day time frame constitutes a valid response.

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[5] The Custodian attached additional documents that are not relevant to the instant complaint.

The Custodian certifies that all OPRA requests sent to the County are forwarded to her office for review. The Custodian certifies that any records readily available in her office are sent immediately to the requestor. The Custodian certifies that she must send a memorandum to the relevant department if she does not maintains the records. The Custodian certifies that here, she sent a memorandum to the County Finance Department.[6] The Custodian certifies that on July 7, 2011, twelve (12) business days after receipt of the OPRA request and five (5) business days after her initial response, the Custodian sent the responsive records to the Complainant.

The Custodian contends that the instant Denial of Access Complaint is disingenuous. The Custodian contends that her June 22, 2011 response was timely and appropriate. The Custodian contends that the Complainant blatantly failed to inform the GRC that the Custodian provided the responsive records on July 7, 2011. The Custodian notes that she contacted the Complainant upon receipt of this complaint and he seemed surprised that such a complaint was filed. The Custodian questions this reaction as it appears as though he signed the complaint.

September 28, 2011

Letter from the Custodian to the GRC attaching a verified complaint and brief in support of Order to Show Cause in Richford v. Gerofsky, Docket No. MER-L-2415-11. The Custodian states that the Surrogate received a copy of the attached complaint on September 27, 2011 filed against her by Ms. Lisa Richford ("Ms. Richford"). The Custodian notes that the complaint appears to include the complaint currently pending before the GRC.

The Custodian states that although OPRA provides requestors with a choice of either the GRC or Superior Court when disputing a denial of access, it is well-settled law that a requestor may not file complaints in both venues. N.J.S.A. 47:1A-6. The Custodian finally notes that notwithstanding the instant complaint, Ms. Richford certified that there is no other pending action regarding the request at issue herein.

October 7, 2011

Letter from Ms. Richford to the GRC attaching an objection to an Order to Show Cause dated October 3, 2011. Ms. Richford states attached are copies of her certification and exhibits submitted to the Court in reference to Richford.

October 14, 2011

E-mail from Ms. Richford to the GRC. Ms. Richford asserts that the Custodian failed to comply with the OPRA request at issue herein. Ms. Richford further asserts that this complaint should remain open until the Custodian provides all records for the Surrogate's three (3) terms over 15 years. Ms. Richford asserts that the Complainant attempted to return a telephone call to the GRC on October 7, 2011 but was unable to leave a message. Ms. Richford requests that any further communication or questions regarding the instant complaint should be referred directly to her.

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[6] The Custodian notes that the County has an internal policy to refer all OPRA requests to the Office of County Counsel.

October 14, 2011

E-mail from the Custodian to the GRC and Ms. Richford. The Custodian notes that the Complainant's OPRA request sought trust account records from 2004 through the date of the OPRA request and not 15 years of records. The Custodian states that she never received such a request and there is no evidence of such in the record. The Custodian states that the four (4) page trust account record provided to the Complainant on July 7, 2011 is the complete record to include expenditures.

The Custodian notes that the Complainant appears to not understand that no expenditures were made from the trust account and that the Custodian cannot provide what does not exist.

October 14, 2011

E-mail from Ms. Richford to the Custodian and GRC. Ms. Richford states that the Complainant originally drafted an OPRA request seeking the account information for a 15 year period; however, it was reduced to six (6) years[7] so that the request was not deemed to be voluminous. Ms. Richford argues that notwithstanding this fact, the record provided to the Complainant on July 7, 2011 contains no trust account information.

Analysis

Whether the Custodian sufficiently responded to the Complainant's OPRA request?

OPRA provides that:

> "[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof …" N.J.S.A. 47:1A-5.g.

Further, OPRA provides that:

> "[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access … or deny a request for access … as soon as possible, but *not later than seven business days after receiving the request* … In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request* …" (Emphasis added.) N.J.S.A. 47:1A-5.i.

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A.

[7] The request actually encompassed eight (8) years of records.

47:1A-5.g.[8] Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

Additionally, in Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008), the custodian provided the complainant with a written response to the complainant's OPRA request on the seventh (7th) business day following receipt of said request. In the response, the custodian requested an extension of time to respond to said request but failed to provide an anticipated deadline date upon which the requested records would be provided. The Council held that the custodian's request for an extension of time was inadequate under OPRA pursuant to N.J.S.A. 47:1A-5.i.

Here, the Custodian responded in writing to the Complainant's OPRA request on the second (2nd) business day after receipt of same stating that she would need more than the statutorily mandated seven (7) business days to respond. However, the Custodian failed to provide a date certain on which she would respond to the Complainant providing access to the responsive records.

Therefore, although the Custodian responded in writing to the Complainant's OPRA request within statutorily mandated time frame to respond, the Custodian's written response was insufficient pursuant to N.J.S.A. 47:1A-5.i. and Hardwick, *supra*, because the Custodian failed to provide an anticipated date upon which she would respond to the Complainant providing the responsive records. *See also* Bentz v. Borough of Paramus (Bergen), GRC Complaint No. 2008-89 (June 2011).

Whether the Custodian unlawfully denied access to the requested records?

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*

[8] It is the GRC's position that a custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

> *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 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.

The Complainant submitted the instant complaint on July 27, 2011 after allegedly not receiving a response from the Custodian. In the SOI, the Custodian certified that she responded on July 7, 2011 providing access to a four (4) page trust account printout. The Custodian further contended that the Complainant blatantly omitted her response from the Denial of Access Complaint. Ms. Richford thereafter argued that the Custodian failed to comply with the Complainant's OPRA request.

Thus, the crux of this complaint is whether the Custodian actually provided the responsive records on July 7, 2011. The evidence supports the Custodian's SOI certification that she did in fact respond providing access to the responsive trust account printout. Although Ms. Richford argues otherwise, she provides no competent, credible evidence sufficient to refute the Custodian's certification. The evidence presented to the GRC clearly shows that although the Custodian's initial response was insufficient, she subsequently provided access to the responsive records on July 7, 2011.

Therefore, although the Custodian's initial response was insufficient, the Custodian did not unlawfully deny access to the responsive records because she provided such records on July 7, 2011. N.J.S.A. 47:1A-6. *See also* Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005)(holding that the custodian met the burden of proving that all responsive records were provided and there was no unlawful denial of access).

The GRC notes that certain circumstances in this complaint potentially could have fatally impacted the outcome. Initially, the Custodian raised concern that the Complainant was not aware of the filing of this complaint. The Complainant has not confirmed this to be true; however, the law is clear that "[a] person who is denied access to a government record may … file a complaint …" N.J.S.A. 47:1A-6. The GRC notes that in the past, it has allowed the filing of a complaint on behalf of a party in instances where an attorney submits a request for a client. However, the relationship between the Complainant and Ms. Richford is not entirely clear. Specifically, the Denial of Access Complaint states that this complaint was filed on behalf of Ms. Richford; however, the

representation section shows that Ms. Richford is appearing on behalf of the Complainant.

Further, on September 28, 2011, the Custodian brought to the GRC's attention that Ms. Richford filed a verified complaint with the Superior Court in which she included the facts of this complaint. The Custodian stated that she believed well-settled law prohibited the filing of the same complaint in both Superior Court and before the GRC. N.J.S.A. 47:1A-6. In the instance that a requestor simultaneously files complaints in both venues, the Council has routinely administratively disposed of the complaint pending before it. However, here, the GRC has received no indication that the Court ever addressed or rendered a decision on the facts of this complaint. Thus, the GRC has adjudicated this complaint accordingly and did not administratively dispose of same.

Whether the Custodian's insufficient response 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, 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, 107 (App. Div. 1996).

Although the Custodian's response was insufficient pursuant to N.J.S.A. 47:1A-5.i. because she failed to provide a date certain on which she would respond, the Custodian did not unlawfully deny the Complainant access to the responsive records. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's insufficient response does not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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.*

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, *supra,* at 71, (quoting Buckhannon Board & Care Home v. West Virginia Department of Health & Human Resources, 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, but also over 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, *supra*, that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, *citing* Teeters, *supra*, 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." (Footnote omitted.) Mason at 73-76 (2008).

The Court in Mason, *supra*, at 76, held that "requestors 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)."

The Complainant filed this complaint on July 27, 2011 arguing that the Custodian failed to respond to the OPRA request seeking trust account records. However, the Custodian certified in the SOI that she provided access to the responsive records on July 7, 2011, or 20 days before the filing of this complaint. Additionally, neither the Complainant nor Ms. Richford provided any competent, credible evidence to refute same and, further, omitted this fact from the Denial of Access Complaint. Thus, it is clear that the filing of this complaint did not bring about a change in the Custodian's conduct as she provided the responsive records 20 days prior to the filing of this matter.

Pursuant to Teeters, *supra*, 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. Additionally, pursuant to Mason, *supra*, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian disclosed the responsive records on July 7, 2011, 20 days prior to the filing of this complaint. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Although the Custodian responded in writing to the Complainant's OPRA request within statutorily mandated time frame to respond, the Custodian's written response was insufficient pursuant to N.J.S.A. 47:1A-5.i. and Hardwick v. NJ Department of Transportation, GRC Complaint No. 2007-164 (February 2008) because the Custodian failed to provide an anticipated date upon which she would respond to the Complainant providing the responsive records. *See also* Bentz v. Borough of Paramus (Bergen), GRC Complaint No. 2008-89 (June 2011).

2. Although the Custodian's initial response was insufficient, the Custodian did not unlawfully deny access to the responsive records because she provided same on July 7, 2011. N.J.S.A. 47:1A-6. *See also* Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005)(holding that the custodian met the burden of proving that all responsive records were provided and there was no unlawful denial of access).

3. Although the Custodian's response was insufficient pursuant to N.J.S.A. 47:1A-5.i. because she failed to provide a date certain on which she would respond, the Custodian did not unlawfully deny the Complainant access to the responsive records. N.J.S.A. 47:1A-6. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's insufficient response does not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

4. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), 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. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian disclosed the responsive records on July 7, 2011, 20 days prior to the filing of this complaint. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

October 23, 2012[9]

[9] This complaint was prepared and scheduled for adjudication at the Council's October 30, 2012 meeting; however, said meeting was cancelled due to Hurricane Sandy. Additionally, the Council's November 27, 2012 meeting was cancelled due to lack of quorum.