



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

CHARLES A. RICHMAN  
Commissioner

**FINAL DECISION**

**September 29, 2016 Government Records Council Meeting**

Gregory B. Pasquale, Esq.  
(o/b/o Monroe Township Utility Department)  
Complainant

Complaint No. 2015-172

v.

NJ Department of Environmental Protection  
Custodian of Record

At the September 29, 2016 public meeting, the Government Records Council (“Council”) considered the September 22, 2016 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. Two (2) administrative errors, attributed to several individuals, resulted in an insufficient response because the New Jersey Department Environmental Protection failed to grant access to the records identified as responsive to the Complainant’s OPRA request. N.J.S.A. 47:1A-5(g), Wolosky v. Twp. of Rockaway (Morris), GRC Complaint No. 2010-242 (February 2012). However, the Custodian’s denial of access to the requested records was not unlawful under OPRA because he rectified the error upon receipt of the Denial of Access Complaint by providing a corrected response to the Complainant on June 30, 2015. N.J.S.A. 47:1A-6.
2. Several individuals contributed to administrative processing errors that ultimately resulted in two (2) responses that no records existed. However, the Custodian certified in the SOI that, following the filing of this complaint, he identified the errors and corrected same by disclosing responsive records to the Complainant on June 30, 2015. Additionally, the evidence of record does not indicate that the individuals’ violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, no individual’s actions rose to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. 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 (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 (2008). Specifically, the facts of this complaint do not prove a causal nexus between New Jersey Department of Environmental Protection’s erroneous responses and the Custodian’s June 30, 2015 response disclosing



responsive records. 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 51.

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 29<sup>th</sup> Day of September, 2016

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: October 4, 2016**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 29, 2016 Council Meeting**

**Gregory B. Pasquale, Esq.**  
**(On Behalf of Monroe Twp. Utility Dep't)<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2015-172**

v.

**NJ Department of Environmental Protection<sup>2</sup>**  
**Custodial Agency**

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

1. All letters, memoranda, correspondence, and e-mails regarding the Monroe Township Utilities Authority (“MUA”) bulk purchase contract with Elizabethtown Water Company’s (“EWC”) connection at Prospect Plains-Cranbury Road between January 1, 2002, and January 5, 2005.
2. All letters, memoranda, correspondence, and e-mails regarding Monroe Township Utility Department (“MTUD”)(formerly the MUA) bulk purchase contract with EWC’s connection at Prospect Plains-Cranbury Road between January 1, 2013, and May 7, 2015.
3. All firm capacity calculations for the MUA bulk purchase contract with EWC.
4. All memoranda and e-mails regarding a New Jersey Department of Environmental Protection (“DEP”) policy change from calculating annual allocation credit based on an interconnection hydraulic capacity to calculating annual water supply credit for an interconnection based on the volume of water contractually guaranteed to be delivered.

**Custodian of Record:** Matthew J. Coefer  
**Request Received by Custodian:** May 11, 2015  
**Response Made by Custodian:** May 15, 2015  
**GRC Complaint Received:** June 11, 2015

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

**Request and Response:**

On May 11, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 15, 2015, Priya

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Deputy Attorney General Nicolas Seminoff.

<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.

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Sundaram responded in writing on behalf the Custodian, seeking an extension of time until May 22, 2015. The Complainant agreed to the extension on that same day. On May 22, 2015, the Custodian responded in writing, advising that no records responsive to the Complainant's OPRA request existed.

On May 22, 2015, the Complainant e-mailed Ms. Sundaram, disputing that no records existed. The Complainant attached two (2) letters, stating that they indicated that some records should exist. Ms. Sundaram forwarded the Complainant's e-mail (with attachments) to Roxann Frederick, Assistant Commissioner in DEP's Water Resource Management Program ("WRM"). On June 1, 2015, the Custodian again responded that no records existed.

#### Denial of Access Complaint:

On June 11, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant disputed DEP's denial of access, asserting that responsive records existed.

The Complainant stated that the genesis of his request related to an April 13, 2015 meeting between the MTUD and DEP. The Complainant stated that the topic of said meeting was the calculation of firm water capacity associated with the EWC contract (now New Jersey American Water Company). The Complainant averred that DEP sent MTUD a letter on April 29, 2015, recapitulating the meeting and referring to several pieces of correspondence dating back to June 2003 on the calculation issue. The Complainant stated that, based on DEP's April 29, 2015 letter, the MTUD caused him to submit the subject OPRA request.

#### Supplemental Response:

On June 30, 2015, the Custodian revised his response to the Complainant. Specifically, the Custodian stated that DEP located records responsive to all four (4) items. The Custodian stated that he mailed to the Complainant all records previously not disclosed due to DEP's processing error. The Custodian also apologized for any inconvenience DEP's processing error may have caused the Complainant.

Regarding item No. 4, the Custodian noted that the request would require research, which he was not required to conduct under OPRA. Further, the Custodian stated that the responsive records contained detailed discussions about water systems that are exempt for domestic security concerns under N.J.S.A. 47:1A-9(a) and N.J.A.C. 7:1D-3.2(b). Further, the Custodian averred that the records contained "inter-agency or intra-agency advisory, consultative, or deliberative" ("ACD") material that is exempt from disclosure under N.J.S.A. 47:1A-1.1. The Custodian stated that, as an accommodation, DEP was disclosing a final "Draft" copy of the "Water Availability Analysis" guidance document, which was the amassed report that supported DEP's policy change.

#### Statement of Information:

On July 1, 2015, the Custodian filed a Statement of Information ("SOI"). The Custodian

certified that he received the Complainant's OPRA request on May 11, 2015. The Custodian certified that Ms. Sundaram reviewed the subject OPRA request and directed it to Assistant Commissioner Frederick at WRM. The Custodian affirmed that Assistant Commissioner Frederick distributed the request to four (4) individuals within WRM, including Sarah Willis from the Divisions of Water Supply and Geoscience, to perform a search. The Custodian certified that Assistant Commissioner Frederick requested additional time to search and that Ms. Sundaram responded to the Complainant in writing on his behalf, obtaining an extension until May 22, 2015. The Custodian affirmed that DEP also performed several e-mail searches using DEP's archived e-mail systems to seek records for the relevant time periods for several specific key words. The Custodian certified that the e-mail search yielded no records.

The Custodian affirmed that DEP utilizes an electronic system called OPRA Tracking System ("OPRATS") to monitor and review active OPRA requests. The Custodian certified that, regarding the subject OPRA request, all file officers reviewing the request input "[n]o [r]ecords" into OPRATS, and WRM subsequently responded back by advising that no records existed. The Custodian certified that DEP responded to the Complainant on May 22, 2015, advising him that no records existed. The Custodian certified that his investigation into this response revealed the first (1<sup>st</sup>) administrative processing error. Specifically, the Custodian averred that someone other than Ms. Willis responded "[n]o [r]ecords" within OPRATS. The Custodian affirmed that this change removed the request from Ms. Willis' "To-Do" list and caused her response to appear as "[n]o [r]ecords" in OPRATS. The Custodian noted that the error also resulted in Ms. Willis mistakenly believing that she had responded that records existed; to the contrary, OPRATS indicated to his office that no records existed.

The Custodian certified that, after his initial response that no records existed, the Complainant provided clarification that prompted DEP to search again for responsive records. The Custodian affirmed that Ms. Sundaram resent the request to Assistant Commissioner Frederick, who assigned the request to Ms. Willis and one other individual. The Custodian certified that, on May 27, 2015, Ms. Willis located approximately two (2) inches of records, at which point Assistant Commissioner Frederick alerted the Custodian that WRM had located responsive records. Notwithstanding the foregoing, Anne Hartnagel sent a response to the Complainant on June 1, 2015, stating that no records existed. The Custodian certified that a subsequent investigation into Ms. Hartnagel's response revealed a second (2<sup>nd</sup>) administrative processing error. The Custodian certified that Ms. Hartnagel reviewed OPRATS on June 1, 2015, saw the response of "[n]o [r]ecords," and errantly responded in writing on his behalf on June 1, 2015, incorrectly stating as such. The Custodian attributed this error to a large workload, scarce resources, and Ms. Hartnagel's oversight.<sup>4</sup>

The Custodian asserted that DEP made two (2) administrative processing errors that resulted in incorrect responses to the Complainant's OPRA request. The Custodian affirmed that DEP failed to identify the errors until it received the instant complaint. The Custodian certified that, upon identification of these errors, DEP reissued a response on June 30, 2015, and disclosed multiple responsive records at issue in the instant Denial of Access Complaint. The Custodian

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<sup>4</sup> The Custodian noted that Ms. Hartnagel had just returned from leave at the time that she responded to the Complainant's request on June 1, 2015.

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also denied access to ten (10) records; however, the Complainant has not taken issue with those denials.

## Analysis

### Sufficiency of Response

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.

It is the custodian’s responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian’s response is accurate and has an appropriate basis in law. In Schneble v. NJ Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant’s OPRA request existed. GRC Complaint No. 2007-220 (April 2008). The custodian certified that after receipt of the complainant’s denial of access complaint, which contained e-mails responsive to the complainant’s request, the custodian conducted a second search and found records responsive to the complainant’s request. Id. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records. Id. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Further, in Wolosky v. Twp. of Rockaway (Morris), GRC Complaint No. 2010-242 (February 2012), the complainant sought various documents. The custodian provided access to the records via e-mail in a timely manner. The complainant subsequently filed a complaint, arguing that the custodian provided a resolution but not the responsive records. The custodian certified in the SOI that she committed an inadvertent error that she rectified immediately upon receipt of the complaint. The Council determined that:

[A]lthough the Custodian’s response to the Complainant’s OPRA request is insufficient because she failed to grant access to the records specifically requested by the Complainant pursuant to N.J.S.A. 47:1A-5(g), Bart v. Passaic Cnty. Pub. Hous. Auth., GRC Complaint No. 2007-215 (May 2008), and Riley v. City of West Orange, GRC Complaint No. 2008-27 (April 2009), the Custodian’s denial of access . . . was not unlawful under OPRA. N.J.S.A. 47:1A-6.

Id. at 4.

In reaching this conclusion, the Council reasoned that “the Custodian reasonably believed that she was granting access to the requested records when she responded to the OPRA request . . . the Custodian did not assert that the requested records were exempt from disclosure under OPRA.” The Council further noted that the complainant failed to submit any evidence to refute the custodian’s SOI certification.

In the instant matter, the facts of the current case fall somewhere between the facts in Schneble, GRC 2007-220, and Wolosky, GRC 2010-242. Specifically, the custodian in Schneble, GRC 2007-220, did not initially locate responsive records but located some after receiving the Denial of Access Complaint. However, unlike in Schneble, GRC 2007-220, the Custodian here illustrated in the SOI that DEP twice conducted a thorough search for responsive records. It appears that the two (2) administrative errors derailed both attempts to locate and provide responsive records. Further, in Wolosky, GRC 2010-242, the custodian disclosed records, but she was alerted to the fact that she erroneously provided the wrong records upon receipt of the Denial of Access Complaint. However, unlike in Wolosky, GRC 2010-242, several individuals here contributed to errors that resulted in DEP's mistaken response that no records existed when records, in fact, existed.

Of the two (2) cases, the GRC is satisfied that DEP's response trends towards the Council's decision in Wolosky, GRC 2010-242, and away from Schneble, GRC 2007-220. The Council's decision in Schneble, GRC 2007-220, solely addressed an insufficient search resulting in an unlawful denial of access; however, the Custodian here provided a detailed accounting of the search, proving that same was adequate. Conversely, although the issue in Wolosky, GRC 2010-242, regarded erroneous disclosure of responsive records resulting in an insufficient response, DEP's errors here resulted in a response that no records existed. In both Wolosky, GRC 2010-242 and this complaint, the respective custodians did not realize their errors until after receiving the Denial of Access Complaint. For this reason, the GRC is satisfied that, although DEP's two (2) erroneous denials resulted in an insufficient response, the Custodian ultimately did not unlawfully deny access to the responsive records.

Accordingly, two (2) administrative errors, attributed to several individuals, resulted in an insufficient response because DEP failed to grant access to the records identified as responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-5(g), Wolosky, GRC 2010-242. However, the Custodian's denial of access to the requested records was not unlawful under OPRA because he rectified the error upon receipt of the Denial of Access Complaint by providing a corrected response to the Complainant on June 30, 2015. N.J.S.A. 47:1A-6.

### **Knowing & Willful**

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 "[i]f 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 (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); 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)).

Here, several individuals contributed to administrative processing errors that ultimately resulted in two (2) responses that no records existed. However, the Custodian certified in the SOI that, following the filing of the complaint, he identified the errors and corrected same by disclosing responsive records to the Complainant on June 30, 2015. Additionally, the evidence of record does not indicate that the individuals’ violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, no individual’s actions rose to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **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, 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 that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, 387 N.J. Super. at 429; see, e.g., Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), *certif. denied*, 174 N.J. 193 (2002). "But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes." 196 N.J. at 73 (citations omitted).

The Mason Court accepted the application of the catalyst theory within the context of OPRA, stating that:

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that "[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6. Under the prior RTKL, "[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney's fee not to exceed \$500.00." N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

Mason at 73-76 (2008).

The Court in Mason, further held that:

[R]equestors are entitled to attorney's fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) 'a factual causal nexus between plaintiff's litigation and the relief ultimately achieved'; and (2) 'that the relief ultimately secured by plaintiffs had a basis in law.' Singer v. State, 95 N.J. 487, 495, *cert denied* (1984).

Id. at 76.

In this matter, the Complainant filed the instant complaint after receiving two (2) denials from DEP. In the SOI, the Custodian explained how two (2) administrative errors ultimately led to the erroneous responses. The Custodian also certified that DEP had located responsive records

but was unaware that the Complainant had received a second (2<sup>nd</sup>) erroneous response until receipt of the instant complaint. Thus, on its face, it would appear that the filing of the complaint brought about a voluntary change in the Custodian's conduct.

However, the GRC's deeper review of the facts reveals that the Custodian reasonably believed that individuals within his staff properly responded on June 1, 2015, advising that responsive records were located. The evidence of record certainly indicates that the Custodian engaged in a second search in response to the Complainant's May 22, 2015 e-mail in order to ensure that the initial response was accurate. The evidence further supports that the Custodian was aware that WRM located responsive records prior to Ms. Hartnagel's June 1, 2015 response and that DEP expressed no intention of withholding access. For this reason, the GRC is not satisfied that there is a casual nexus between the filing of the complaint and the Custodian's June 30, 2015 response, which rectified two (2) prior erroneous responses based on administrative errors. Accordingly, the Complainant did not prevail in the instant complaint and is not entitled to an award of reasonable attorney's fees.

Accordingly, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters, 387 N.J. Super. 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 facts of this complaint do not prove a causal nexus between DEP's erroneous responses and the Custodian's June 30, 2015 response disclosing responsive records. 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 51.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. Two (2) administrative errors, attributed to several individuals, resulted in an insufficient response because the New Jersey Department Environmental Protection failed to grant access to the records identified as responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-5(g), Wolosky v. Twp. of Rockaway (Morris), GRC Complaint No. 2010-242 (February 2012). However, the Custodian's denial of access to the requested records was not unlawful under OPRA because he rectified the error upon receipt of the Denial of Access Complaint by providing a corrected response to the Complainant on June 30, 2015. N.J.S.A. 47:1A-6.
2. Several individuals contributed to administrative processing errors that ultimately resulted in two (2) responses that no records existed. However, the Custodian certified in the SOI that, following the filing of this complaint, he identified the errors and corrected same by disclosing responsive records to the Complainant on June 30, 2015. Additionally, the evidence of record does not indicate that the individuals' violations of OPRA had a positive element of conscious wrongdoing or were intentional and deliberate. Therefore, no individual's actions rose to the level of a

knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

3. 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 (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 (2008). Specifically, the facts of this complaint do not prove a causal nexus between New Jersey Department of Environmental Protection's erroneous responses and the Custodian's June 30, 2015 response disclosing responsive records. 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 51.

Prepared By: Frank F. Caruso  
Communications Specialist/Resource Manager

September 22, 2016