



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

March 27, 2018 Government Records Council Meeting

Mary Sadrakula
Complainant

Complaint No. 2016-60

v.

Clifton Board of Education (Passaic)
Custodian of Record

At the March 27, 2018 public meeting, the Government Records Council (“Council”) considered the March 20, 2018 Findings and Recommendations of the Council Staff and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that L

1. Because the Custodian fulfilled the Complainant’s OPRA request within the statutorily mandated seven (7) business days as prescribed in OPRA, the Custodian did not unlawfully deny access to the requested records. N.J.S.A. 47:1A-5(i); N.J.S.A. 47:1A-6.
2. The Complainant requested access to a contract on February 16, 2016, and was allowed to inspect said contract that same day. Although the Complainant also desired to have electronic and/or physical copies of the contract in anticipation of public meeting held the day after, the Clifton Board of Education is not obligated to provide responsive records without the advice from counsel or the Custodian due to an external timetable. Therefore, the Custodian timely responded to Item no. 2 of the Complainant’s OPRA request for a contract, because she was allowed to inspect the record and was informed when she could obtain a copy on the same day as when she submitted her request. N.J.S.A. 47:1A-5(e); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007). Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.
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, 432 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Custodian did not unlawfully deny access to the Complainant’s OPRA request because she timely responded to the request within the mandated seven (7) business day deadline. 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 27th Day of March, 2018

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: March 29, 2018

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff
March 27, 2018 Council Meeting**

**Mary Sadrakula¹
Complainant**

GRC Complaint No. 2016-60

v.

**Clifton Board of Education (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Inspection and electronic copies of:

1. Report from Ken's Tree Care Service about the trees at School 16
2. Contract from Rich's Tree Service - removal of trees at School 16
3. Pictures of trees at School 16

Custodian of Record: Karen L. Perkins

Request Received by Custodian: February 16, 2016

Response Made by Custodian: February 18, 2016

GRC Complaint Received: February 18, 2016

Background³

Request and Response:

On February 16, 2016 the Complainant submitted via hand delivery an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. That same day, the Complainant was initially told by an employee at the Clifton Board of Education ("CBOE") office that she could not review the records. After objection, the Complainant was informed that she could view and inspect the records, but that copies could not be provided that day.

Denial of Access Complaint:

On February 18, 2016 the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that she was given the runaround from CBOE from when she first arrived their office on February 16, 2016. The Complainant asserted that she could not view the records because the Custodian was not present

¹ Represented by C.J. Griffin of Pashman Stein, LLC (Hackensack, NJ).

² Represented by Frank L. Lebres, Esq. of Cleary, Giacobbe, Alfieri, Jacobs, LLC (Oakland, NJ).

³ 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.

in the office. After objecting, the Complainant stated that CBOE's Director of Buildings and Grounds informed her that she could view the pictures of the trees (Item no. 3), but would not let her review the other records on the objection from the Superintendent.

The Complainant then stated that she reached out to the Assistant Superintendent ("AS") to object to her denial of access. The Complainant told him that under OPRA, she was entitled to immediate access to the contract (Item no. 2). The AS replied by saying that based upon advice from counsel, the Complainant could review the records at issue but could not take pictures or keep copies. According to the Complainant, he further stated that counsel would send her copies of the requested records in seven (7) business days. The Complainant stated that the AS accompanied her to CBOE's business office to review the records but told the employee behind the counter that the Complainant could not keep copies or take pictures. The Complainant alleged that the employee then destroyed the copies that had already been made prior to her arrival at the office.

The Complainant argued that OPRA's "purpose is 'to maximize public knowledge about public affairs and to minimize the evils inherent in a secluded process.'" Mason v. City of Hoboken, 196 N.J. 51, 64 (2008) (quoting Lakewood Residents Assoc., Inc. v. Twp. of Lakewood, 294 N.J. Super. 373, 382-83 (App. Div. 2003). Additionally, the Complainant made note that the contract requested (Item no. 2) is classified as an immediate access record under N.J.S.A. 47:1A-5(e), and that the Custodian cannot satisfy its burden of proving that the denial of access was lawful. See N.J.S.A. 47:1A-6.

The Complainant noted that a CBOE meeting was scheduled on February 17, 2016, and implied that among the topics of discussion would be the contract identified as Item no. 2 of the Complainant's OPRA request. The Complainant argued that the Custodian did not and cannot provide any lawful basis to disallow the Complainant to have copies of the requested records on February 16, 2016, but could have them at a later date. The Complainant alleged that the reason the CBOE would not allow her to have copies of the requested records on February 16, 2016 was in order to prevent her from having those records for the meeting scheduled for the next day.

The Complainant requested that the GRC find that the Custodian violated OPRA by withholding copies of the requested records and thus find that the Complainant is a prevailing party entitled to an award of attorney's fees. Additionally, the Complainant requested that the GRC find that the Custodian's refusal to provide the Complainant with a copy of an immediate access record is a willful violation of OPRA, and thus punishable by a civil penalty.

Supplemental Response:

On February 18, 2016, the Custodian responded in writing to the Complainant, providing copies of each requested item.

Additional Submissions:

On February 19, 2016, the Custodian provided the GRC with correspondence related to this matter in response to the complaint. The Custodian argued that the matter be dismissed as

moot, as the Custodian provided the Complainant with copies of the requested records within the statutorily mandated seven (7) business days from receipt of the request.

The Custodian stated that the Complainant submitted her OPRA request on February 16, 2016. At the time, the Complainant was informed that because the Custodian was not at the office, she would be permitted to review and inspect the records, but copies would be provided at a later date. Additionally, the Custodian stated that another reason why the Complainant could not access the requested contract (Item no. 2) was because it had not been finalized. The Custodian stated that although the Complainant could not take pictures of the requested records, she was not denied access, nor was she told that she would not receive physical copies of the records.

The Custodian attached her February 18, 2016 response to the Complainant, including copies of the requested records. The attached records also included copies of the initial contract and the amended contract as responsive to Item no. 2. The Custodian asserted these attachments as evidence the Complainant was not unlawfully denied access to the records, and the matter should be dismissed.

Regarding the Complainant's allegations as to why she was not allowed to have copies of the requested records on February 16, 2016, the Custodian replied that the Complainant was still allowed to review and inspect the records at issue, and thus had knowledge of the records' contents. The Custodian claimed that the Complainant used this knowledge to speak publicly at the February 17, 2016 meeting and question CBOE members about the contract at issue. Therefore, the Custodian stated that the Complainant was not prejudiced or suffered harm as a result of not receiving copies of the records on the day of the inspection. The Custodian requested that the GRC dismiss the complaint and find that the Complainant is not a prevailing party.

On February 22, 2016, the Complainant responded to the Custodian's February 19, 2016 letter to the GRC. The Complainant objected to the Custodian's request to dismiss the matter as moot, noting that a custodian cannot render a complaint/lawsuit or liability for attorney's fees "moot" by releasing the records after a complaint has been filed. The Complainant stated that the purpose of the complaint is to find that the Custodian's conduct violated OPRA and should be entitled to attorney's fees in seeking that determination.

The Complainant objected to the Custodian's argument that her response was lawful and timely. The Complainant noted that OPRA's statute does not mandate that the Custodian provide responsive records within seven (7) business days, rather it mandates that the records be provided "as soon as possible," but states that the Custodian has a maximum of seven (7) business days to respond. N.J.S.A. 47:1A-6. In the current matter, the Complainant argued that "as soon as possible" meant February 16, 2016; evidenced by the claim that CBOE made copies for the Complainant to review, but instead of actually handing over said copies, they were destroyed and the Complainant was told that they would be provided within seven (7) business days. The Complainant argued that this is evidence of CBOE's attempt to undermine OPRA's statutory purpose and should not be tolerated.

Additionally, the Complainant argued that CBOE's refusal to allow her to have a copy of the requested contract (Item no. 2) was itself a violation of N.J.S.A. 47:1A-5(e). The Complainant

contended that the claim that the contract was going to be amended is not a justification to deny her access to a copy. The Complainant argued that she has a right to review both the original and any amended versions of the contract so she can see how her tax dollars are being spent. Although the Complainant acknowledged that the Custodian provided her with those records via the February 18, 2016 response, the Complainant maintained that the production was untimely because it prevented her from having the records in possession for the February 17, 2016 meeting. The Complainant asserted that the reasoning behind records such as contracts, bills, budgets, etc. are classified as “immediate access” was so that requestors could have them on hand during public meetings discussing the records. The Complainant contended that CBOE’s actions were “egregious” and run contrary to the spirit of OPRA.

The Complainant reiterated her request that the GRC find the Custodian in violation of OPRA and award attorney’s fees.

Statement of Information:

On March 1, 2016 the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 16, 2016. The Custodian certified that the search for records consisted of contacting CBOE’s Director of Buildings and Grounds, and found that the responsive records were kept on file with the Maintenance Department.

The Custodian certified that she was not present at the time of the request, but attested to the events described. The Custodian certified that although she was not available, the Complainant was able to review and inspect the records, and took notes of the information contained therein. The Custodian stated that the employees assisting the Complainant were unsure as to whether the Complainant could take photographs of the records using her phone, as well as releasing a copy of a contract that was currently being amended. Thus, the Custodian certified that the Complainant was told that she would receive physical copies of the records within seven (7) business days. The Custodian then certified that she e-mailed the Complainant copies of the records on February 18, 2016, two (2) days after submission.

The Custodian asserted that strict adherence to the “immediate” access provision under OPRA to mean instantaneous access is prejudicial to public entities. The Custodian noted that OPRA’s usage of “ordinarily” within the statute acknowledges the reality that immediate access to certain records may not always be possible. N.J.S.A. 47:1A-5(e). In the current matter, the Custodian asserted that the present employees weren’t sure of whether to disclose the contract, and preferred to wait until the Custodian returned from leave.

Lastly, the Custodian rejected the assertion that CBOE committed “egregious” conduct against the Complainant, and denied that copies of the records were destroyed on February 16, 2016. The Custodian maintained that the Complainant was never told that she did not have or would not have access to the records, but that she would receive copies. The Custodian contended that the Complainant was able to review the records, take notes, and speak on the matter at CBOE’s meeting the next day. The Custodian stated that public entities should be allowed reasonable flexibility and not be penalized for waiting to confirm the release of records with the Custodian.

Analysis

Timeliness / Unlawful Denial of Access

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

OPRA 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). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁴ 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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

Item Nos. 1 & 3

In Wolosky v. Twp. of Morris (Morris), GRC Complaint No. 2010-227 (December 2011), the complainant filed an OPRA request on August 25, 2010. The custodian responded on August 26, 2010, providing the complainant with responsive records. However, on August 31, 2010, four (4) business days after receipt, the complainant filed a Denial of Access Complaint with the GRC, expressing dissatisfaction with the August 26, 2010 response. That day, the custodian acknowledged that she misinterpreted a portion of the OPRA request and provided the complainant with the correct records. The Council held that because the Custodian fulfilled the complainant’s OPRA request within the seven (7) business day limit, there was no unlawful denial of access.

In the instant matter, the Complainant sought Item nos. 1 & 3 from the Custodian on February 16, 2016. Her OPRA request indicated that she wished to inspect the records and receive copies electronically via e-mail. The regular custodian was absent, so another employee at CBOE handed the request. The employee granted the Complainant access to view the records and take notes if she wanted. The employee informed complainant the electronic copy of the requested records would be sent within seven (7) business day response period.

The Complainant filed her Denial of Access Complaint on February 18, 2016, two (2) business days later, objecting to not having received electronic copies of the records on the same day as inspection. Similar to the custodian in Wolosky, GRC 2010-227, the Custodian responded in writing on the same day as the complaint filing, providing the Complainant with electronic copies of the responsive records, to which the Complainant acknowledged receipt.

⁴ 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.

OPRA's statute grants custodians an initial seven (7) business days to respond to an OPRA request. It is not unreasonable or unheard of for an agency to use the full seven (7) business days or an extension of time to confer with legal counsel or the records custodian prior to disclosure, even when the records are readily available. See Paff v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2005-115 (March 2006) (holding that the desire to obtain legal advice is a reasonable basis to seek additional time to respond to a request).

Here, CBOE fulfilled Complainant's OPRA request in its entirety within the required seven (7) business day response period. The CBOE employee covering for the Custodian timely provided the Complainant with inspection of the records: one of the preferred method of deliveries she had specified in the OPRA request. The Complainant confirmed that she was provided access to the records for inspection on the same day she had filed her OPRA request; and that she had received electronic copies of the responsive records within the seven (7) business day response period. The fact that the CBOE employee did not allow the Complainant to have physical copies of the records at the time of inspection is of no moment. The decision not to send the documents electronically until the Custodian returned and reviewed the request did not violate OPRA because disclosure was made in accordance with OPRA's time prescriptions.

Accordingly, because the Custodian fulfilled the Complainant's OPRA request within the statutorily mandated seven (7) business days as prescribed in OPRA, the Custodian did not unlawfully deny access to the requested records. N.J.S.A. 47:1A-5(i); N.J.S.A. 47:1A-6.

Item No. 2

OPRA provides that contracts are classified as "immediate access" records under N.J.S.A. 47:1A-5(e). In Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that the "immediate access language of OPRA (N.J.S.A. 47:1A-5.e.) suggests that the Custodian was still obligated to immediately notify the Complainant . . ." Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian should respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request.

In the instant matter, the Complainant sought access to a contract from the Custodian on February 16, 2016 for inspection as well as a copy. That same day, employees at CBOE granted the Complainant access to inspect the contract. However, the employees informed the Complainant that she could not obtain a copy of the contract because the Custodian was not present and the contract was expected to be amended at the upcoming meeting. The Complainant was also informed that she would receive a copy of the finalized contract within the allotted seven (7) business days. On February 18, 2016, the Complainant acknowledged receipt of a copy of the finalized contract.

Whereas the custodian in Herron failed to respond to a request for an immediate access record until the sixth (6th) business days, the CBOE provided inspection of the unfinalized contract to the Complainant on the same business day as submission of the OPRA request, as the Complainant conceded. She also conceded that she received an electronic copy of the finalized

contract two (2) business days after submitting her OPRA request. Furthermore, while the Complainant argued that she should have had access to the contract prior to following day's meeting, there was no evidence in the record demonstrating that the Complainant was disadvantaged from not having a physical copy of the unfinalized contract.

Accordingly, the Complainant requested access to a contract on February 16, 2016, and was allowed to inspect said contract that same day. Although the Complainant also desired to have electronic and/or physical copies of the contract in anticipation of public meeting held the next day, the CBOE is not obligated to provide responsive records without the advice from counsel or the Custodian due to an external timetable. Therefore, the Custodian timely responded to Item no. 2 of the Complainant's OPRA request for a contract, because she was allowed to inspect the record and was informed when she could obtain a copy on the same day as when she submitted her request. N.J.S.A. 47:1A-5(e); Herron, GRC 2006-178. Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.

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 (7th ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because "[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties . . ." Id. at 605, 121 S. Ct. at 1840, 149 L.

Ed. 2d at 863. Further, the Supreme Court expressed concern that the catalyst theory would spawn extra litigation over attorney's fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

However, the Court noted in 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, 196 N.J. at 73-76.]

The Court in Mason, further held that:

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

[Id. at 76.]

Here, the Complainant disputed CBOE and the Custodian’s conduct in preventing her from obtaining physical copies of the requested records while she was inspecting them. However, the evidence in the record demonstrates that the Complainant was given access to inspect the records on the date of her OPRA request submission. Furthermore, the Custodian responded to the Complainant immediately regarding her request for a contract, and was provided with copies of all the requested records on the second (2nd) business day after receiving the request. Thus, the GRC is not ordering any relief as the Custodian did not unlawfully deny access to records that were timely provided. For this reason, the Complainant is not a prevailing party entitled to an award of reasonable attorney’s fees.

Therefore, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters, 387 N.J. Super. 432. Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 51. Specifically, the Custodian did not unlawfully deny access to the Complainant's OPRA request because she timely responded to the request within the mandated seven (7) business day deadline. 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 Council Staff respectfully recommends the Council find that:

1. Because the Custodian fulfilled the Complainant's OPRA request within the statutorily mandated seven (7) business days as prescribed in OPRA, the Custodian did not unlawfully deny access to the requested records. N.J.S.A. 47:1A-5(i); N.J.S.A. 47:1A-6.
2. The Complainant requested access to a contract on February 16, 2016, and was allowed to inspect said contract that same day. Although the Complainant also desired to have electronic and/or physical copies of the contract in anticipation of public meeting held the day after, the Clifton Board of Education is not obligated to provide responsive records without the advice from counsel or the Custodian due to an external timetable. Therefore, the Custodian timely responded to Item no. 2 of the Complainant's OPRA request for a contract, because she was allowed to inspect the record and was informed when she could obtain a copy on the same day as when she submitted her request. N.J.S.A. 47:1A-5(e); Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007). Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.
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, 432 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Custodian did not unlawfully deny access to the Complainant's OPRA request because she timely responded to the request within the mandated seven (7) business day deadline. 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: Samuel A. Rosado
Staff Attorney

March 20, 2018