



## State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS

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CHARLES A. RICHMAN  
Commissioner

### FINAL DECISION

#### October 31, 2017 Government Records Council Meeting

Clifford P. Yannone, Esq.  
Complainant

Complaint No. 2016-73

v.

NJ Department of Corrections  
Custodian of Record

At the October 31, 2017 public meeting, the Government Records Council (“Council”) considered the October 24, 2017 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. The Custodian has borne his burden of proof that he lawfully denied access to the September 5, 2015 video (which may have never existed) because he certified in the SOI, and the record reflects, that no responsive videos exist. N.J.S.A. 47:1A-6; *see Pusterhofer v. NJ Dep’t of Educ.*, GRC Complaint No. 2005-49 (July 2005).
2. The Custodian lawfully denied access to the responsive recorded interview. N.J.S.A. 47:1A-6. Specifically, the interview was derived from Complainant client’s allegations against Garden State Youth Correctional Facility staff, which constituted a “grievance filed by or against an individual . . .” N.J.S.A. 47:1A-1.1; *Rodgers v. NJ Dep’t of Corr.*, GRC Complaint No. 2007-311 (June 2009). Because the recording is determined to be exempt under N.J.S.A. 47:1A-1.1, the GRC declines to address the Custodian’s other claimed exemptions.
3. The Custodian has borne his burden of proving a lawful denial of access to the September 6, 2015 escort/camera move recording. N.J.S.A. 47:1A-6. Specifically, disclosure of the video would disclose security and surveillance techniques that would jeopardize New Jersey Department of Corrections staff and facilities. N.J.S.A. 47:1A-1.1; *Wassenaar v. NJ Dep’t of Corr.*, GRC Complaint No. 2012-187 (Interim Order dated June 25, 2013).
4. 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 Custodian lawfully denied access to all three (3) records because they either do not exist or were exempt from disclosure.



Therefore, the Complainant is not a prevailing party and is not entitled to an award of a reasonable attorney's fee. *See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 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 31<sup>st</sup> Day of October, 2017

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: November 2, 2017**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
October 31, 2017 Council Meeting**

**Clifford P. Yannone, Esq.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2016-73**

v.

**New Jersey Department of Corrections<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies via U.S. mail of:<sup>3</sup>

1. All video recordings from the Garden State Youth Correctional Facility (“GSYCF”) pertaining to the Complainant’s client, beginning on September 5, 2015, at 12:00 p.m. through September 6, 2015, at approximately 12:00 p.m.
2. All tapes, statements, and documentation pertaining to any and all disciplinary investigations involving the Complainant’s client at GSYCF.
3. All video records from New Jersey State Prison (“NJSP”) pertaining to the Complainant’s client, beginning on September 6, 2015, at 12:00 p.m. through September 10, 2015, at 12:00 a.m.

**Custodian of Record:** John Falvey  
**Request Received by Custodian:** November 23, 2015  
**Response Made by Custodian:** December 3, 2015  
**GRC Complaint Received:** March 3, 2016

**Background<sup>4</sup>**

**Request and Response:**

On November 19, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 3, 2015, the Custodian responded in writing, seeking ten (10) additional business days to respond to the Complainant’s OPRA request. On December 11, 2015, the Custodian responded in writing, denying access to all responsive videos. The Custodian stated that all responsive videos contained “emergency and security information,” as well as “security measures and surveillance

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<sup>1</sup> The Complainant, from Starkey, Kelly, Kenneally, Cunningham & Turnbach (Brick, NJ), represents Denzel Morgan.

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

<sup>4</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.

techniques.” N.J.S.A. 47:1A-1.1. The Custodian stated that the records were criminal investigatory in nature and pertained to a grievance filed by or against an individual, including “any sexual harassment complaint.” Id. The Custodian also stated that the three (3) videos were part of an investigation in progress by the Special Investigation Division (“SID”) at GSYCF due to allegations of assault and official misconduct occurring on or about September 5, 2015. N.J.S.A. 47:1A-3(a); N.J.S.A. 47:1A-10. The Custodian noted that no arrests were made. The Custodian advised that one of the videos also showed how security staff handles movement of a high-risk escort, which is exempt under N.J.S.A. 47:1A-1.1.

On February 2, 2016, the Complainant sent a letter to the Custodian, contesting his denial of access. Therein, the Complainant asserted that the criminal investigatory exemption does not apply to the responsive videos because he was unaware of any criminal investigation regarding his client and no arrests were made. The Complainant further disputed that his client was a “high risk escort,” reiterating that his client was not charged in connection with the criminal conduct captured on the requested videos. Further, the Complainant noted that his client was not under investigation.

On February 8, 2016, the Custodian replied to the Complainant, stating that the New Jersey Department of Corrections (“DOC”) would not revisit its denial of access to the responsive videos.

#### Denial of Access Complaint:

On March 3, 2016, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that his client was unlawfully assaulted on September 6, 2015 at the GSYCF, was transported to the hospital due to his injuries, and was then transferred to NJSP. The Complainant stated that his client retained him to investigate grounds for a civil lawsuit in connection with the alleged assault. The Custodian disputed the Custodian’s denial of access to the responsive video tapes for the reasons stated in his February 2, 2016 letter to the Custodian.

#### Statement of Information:

On March 30, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on November 23, 2015. The Custodian affirmed that SID at both NJSP and GSYCF maintained the responsive videos. The Custodian certified that, upon conducting a search, SID allegedly located three (3) videos, which he originally thought to be four (4) videos. Those videos consisted of: 1) September 5, 2015 GSYCF escort/camera move; 2) Complainant client’s interview regarding the incident; and 3) September 6, 2015 NJSP escort/camera move. The Custodian certified that he responded in writing on December 11, 2015, denying access to the videos under N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-3(a), and N.J.S.A. 47:1A-10.

The Custodian initially certified that, in process of preparing the SOI, SID could not locate the September 5, 2015 video. The Custodian affirmed that GSYCF’s SID originally advised that a September 5, 2015 escort/camera move video existed. The Custodian noted that

these types of videos are made when DOC personnel determine that certain risk factors associated with moving a certain inmate are present. The Custodian certified that GSYCF's SID based the existence of the video on reports associated with logging the video into evidence. The Custodian certified that GSYFC recently informed him that they could not locate the September 5, 2015 video but that they were investigating the circumstances surrounding its possible disappearance. The Custodian thus certified that the September 5, 2015 video either never existed or no longer existed. Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

The Custodian contended that he lawfully denied access to the remaining videos. The Custodian contended that the videos are clearly exempt for all the reasons stated in his initial denial of access. The Custodian affirmed that both videos are evidence in an investigation into staff misconduct pertaining to the client. The Custodian affirmed that, in addition to an internal investigation, the SID referred the matter to the Burlington County Prosecutor's Office ("BCPO") for possible criminal charges against DOC staff. The Custodian thus contended that the videos were exempt as employee grievances and that the GRC's precedential case law supports non-disclosure. *See* Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004); Allen v. Cnty. of Warren, GRC Complaint No. 2003-155 (March 2004); Wares v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2014-330 (June 2015).

The Custodian contended that the videos also fall under the criminal investigatory exemption based on the BCPO investigation. *See* Janeczko v. NJ Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004). The Custodian asserted that the videos were also exempt as part of an on-going investigation that the BCPO had not yet completed. N.J.S.A. 47:1A-3(a). The Custodian also contended that he properly denied access to the videos under both security and surveillance exemptions. N.J.S.A. 47:1A-1.1. The Custodian averred that these exemptions especially apply to the escort video, which shows how the facility conducts high-security escorts, the associated staffing, and areas of the facility not available to the general public. Wassenaar v. NJ Dep't of Corr., GRC Complaint No. 2012-187 (Interim Order dated June 25, 2013).

The Custodian further argued that the Courts have long deferred to DOC when making safety and security decisions. The Custodian states that DOC has "broad discretionary power" to promulgate regulations aimed at maintaining security and order inside correctional facilities. Jenkins v. Fauver, 108 N.J. 239, 252 (1987). The Custodian stated that the Courts have noted that "[p]risons are dangerous places, and the courts must afford appropriate deference and flexibility to administrators trying to manage this volatile environment." Russo v. N.J. Dep't of Corr., 324 N.J. Super. 576, 584 (App. Div. 1999). *See also* Florence v. Bd. of Chosen Freeholders Burlington Cnty., 132 S.Ct. 1510, 1515 (2012) ("[m]aintaining safety and order at these institutions requires the expertise of correctional officials, who must have substantial discretion to devise reasonable solutions to the problems they face[.]") The Custodian stated that the Council has previously upheld a denial of access to records based on safety and security concerns. Reid v. NJ Dep't of Corr. GRC Complaint No. 2013-165 (January 2014); Smith v. NJ Dep't of Corr., GRC Complaint No. 2013-337 (July 2014); Hayes v. NJ Dep't of Corr., GRC Complaint No. 2014-286 (May 2015); Kimpton v. NJ Dep't of Corr., GRC Complaint No. 2014-

333 (July 2015); Diaz-Young v. NJ Dep't of Corr., GRC Complaint No. 2014-377 (September 2015)

The Custodian thus requested that the GRC find that he did not unlawfully deny access to the requested records because: 1) no September 5, 2015 video exists; 2) the recorded interview was criminal investigatory in nature, referred to an investigation in progress, and was an employee grievance record; and 3) the September 6, 2015 video contained security and surveillance information not subject to disclosure.

### Analysis

#### Unlawful Denial of Access

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

#### September 5, 2015 Escort Camera

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. *See* Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Custodian certified in the SOI that SID believed a September 5, 2015 video existed based on reports associated with an evidence log. The Custodian also certified that in preparation of the SOI, SID was unable to locate a responsive video. The Custodian thus affirmed that no video could be located and thus did not exist. The Custodian also affirmed that the September 5, 2015 video either never existed or no longer existed. There is also no evidence in the record to refute this certification.

Accordingly, the Custodian has borne his burden of proof that he lawfully denied access to the September 5, 2015 video (which may have never existed) because he certified in the SOI, and the record reflects, that no responsive videos exist. N.J.S.A. 47:1A-6; *see* Pusterhofer, GRC 2005-49.

#### Recorded Interview

OPRA provides that:

A government record shall not include . . . information generated by or on behalf of public employers or public employees in connection with any sexual harassment complaint filed with a public employer [or] with any grievance filed by or against an individual . . . .

N.J.S.A. 47:1A-1.1.

In Rodgers v. NJ Dep't of Corr., GRC Complaint No. 2007-311 (June 2009), the complainant sought an SID report related to his accusations of harassment against Bayside State Prison staff. The custodian denied access on the basis that the records related to a “grievance filed by or on behalf of an individual.” N.J.S.A. 47:1A-1.1. In the Denial of Access Complaint, the complainant argued that he needed the report to file a civil case regarding the alleged harassment. After conducting an *in-camera* review, the Council determined that the custodian properly denied access to the report under “grievance” exemption at N.J.S.A. 47:1A-1.1.

Additionally, OPRA exempts access to “the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual . . .” N.J.S.A. 47:1A-10.

Here, the Complainant sought access to his client’s recorded interview regarding an incident that occurred at GSYFC. The Custodian initially denied access to the interview under a number of exemptions, including grievance and personnel record exemptions. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10. The Complainant responded, refuting those exemptions, noting that the video was of his client, no investigation was pending, and the Custodian admitted no arrests were made. In the Denial of Access Complaint, the Complainant reiterated his disagreement with the denial. In the SOI, the Custodian certified that the video was evidence in a staff misconduct investigation. The Custodian also affirmed that the SID referred the matter to the BCPO for an investigation. The Custodian cited to multiple cases to support his denial under the employee grievance exemption. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10.

The GRC finds that the recorded interview is exempt because it relates to a grievance filed against DOC employees who allegedly assaulted the Complainant’s client. In reaching this conclusion, the GRC finds similarities between the facts here and those in Rodgers, GRC 2007-311. Specifically, both cases addressed records borne from allegations levied by inmates against DOC employees. Further, like the complainant in Rodgers, the Complainant here sought access to this record in order to pursue a civil complaint in the wake of alleged staff misconduct. Additionally, DOC has certified in both instances that the records pertained to grievances filed by inmates against employees. The GRC should note that no *in-camera* review is necessary here because the evidence of record clearly indicates that the incident brought about a grievance filed against staff members alleged to have committed the assault.

Accordingly, the Custodian lawfully denied access to the responsive recorded interview. N.J.S.A. 47:1A-6. Specifically, the interview was derived from Complainant client’s allegations against GSYCF staff, which constituted a “grievance filed by or against an individual . . .” N.J.S.A. 47:1A-1.1; Rodgers, GRC 2007-311. Because the recording is determined to be exempt under N.J.S.A. 47:1A-1.1, the GRC declines to address the Custodian’s other claimed exemptions.

#### September 6, 2015 NJSP Escort Video

In addition to the above, OPRA provides that:

A government record shall not include . . . emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein . . . [and] security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons [or] property . . . .

N.J.S.A. 47:1A-1.1.

In Wassenaar, GRC 2012-187, the Council was tasked with determining whether the custodian lawfully denied access to a number of records. Among those records, the complainant sought video images from cameras mounted outside his cell. The custodian denied access under N.J.S.A. 47:1A-1.1, N.J.A.C. 10A:22-2.3(a)(2), and N.J.A.C. 10A:22-2.3(a)(5). In the SOI, the custodian contended that disclosure of any of the responsive records, currently in the possession of SID in GSYCF, would negate the purpose of the cameras for various reasons. The Council agreed and upheld the denial of access, reasoning that disclosure of the video images could be utilized to circumvent DOC's video surveillance program.

Here, the Custodian denied access to the responsive escort video under, among other things, the security and surveillance exemption. As part of the SOI, the Custodian argued that he lawfully denied access to the video based on the Council's decision in Wassenaar, because it showed how the facility staffs and conducts high-security escorts. The Custodian also certified that the video showed areas of the facility not available to the general public.

As was the case in Wassenaar, GRC 2012-187, the GRC finds that the responsive video is exempt from disclosure under OPRA. Similar to the reasoning in Wassenaar, disclosure of the records would clearly reveal techniques of DOC's high-security escort process, regardless of the fact that the images show the Complainant's client. The GRC further finds that disclosure of the video images could be utilized to circumvent DOC's security and surveillances system within its correctional facilities.

Thus, the Custodian has borne his burden of proving a lawful denial of access to the September 6, 2015 escort/camera move recording. N.J.S.A. 47:1A-6. Specifically, disclosure of the video would disclose security and surveillance techniques that would jeopardize DOC staff and facilities. N.J.S.A. 47:1A-1.1; Wassenaar, GRC 2012-187.

### **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. 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 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.

Here, the Complainant filed the instant complaint on behalf of his client, arguing that the Custodian unlawfully denied access to the requested records. In the SOI, the Custodian certified that no September 5, 2015 escort video existed and that the other two (2) responsive records were exempt from OPRA under a number of provisions. Based on the evidence of record, the Council should conclude that the Custodian lawfully denied access to all three (3) records because they either do not exist or are exempt from disclosure. Thus, the Complainant is not a prevailing party and is not entitled to an award of 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. 51. Specifically, the Custodian lawfully denied access to all three (3) records because they either do not exist or were exempt from disclosure. Therefore, the Complainant is not a prevailing party and is not entitled to an award of a reasonable attorney’s fee. *See* N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne his burden of proof that he lawfully denied access to the September 5, 2015 video (which may have never existed) because he certified in the SOI, and the record reflects, that no responsive videos exist. N.J.S.A. 47:1A-6; *see* Pusterhofer v. NJ Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian lawfully denied access to the responsive recorded interview. N.J.S.A. 47:1A-6. Specifically, the interview was derived from Complainant client’s allegations against Garden State Youth Correctional Facility staff, which constituted a “grievance filed by or against an individual . . .” N.J.S.A. 47:1A-1.1; Rodgers v. NJ Dep’t of Corr., GRC Complaint No. 2007-311 (June 2009). Because the recording is determined to be exempt under N.J.S.A. 47:1A-1.1, the GRC declines to address the Custodian’s other claimed exemptions.

3. The Custodian has borne his burden of proving a lawful denial of access to the September 6, 2015 escort/camera move recording. N.J.S.A. 47:1A-6. Specifically, disclosure of the video would disclose security and surveillance techniques that would jeopardize New Jersey Department of Corrections staff and facilities. N.J.S.A. 47:1A-1.1; Wassenaar v. NJ Dep't of Corr., GRC Complaint No. 2012-187 (Interim Order dated June 25, 2013).
4. 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 Custodian lawfully denied access to all three (3) records because they either do not exist or were exempt from disclosure. Therefore, the Complainant is not a prevailing party and is not entitled to an award of a reasonable attorney's fee. *See* N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51.

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

October 24, 2017