

2017 UPDATE ON OPEN PUBLIC RECORDS ACT CASES

NEW JERSEY STATE LEAGUE OF MUNICIPALITIES

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**With appreciation to the New Jersey Institute of Local Government Attorneys and its
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The year 2017 has been particularly busy in the New Jersey Courts for cases under the Open Public Records Act and its analog, the Common Law Right of Access. This presentation will highlight the most significant issues reviewed, with pertinent summaries of the decisions, both reported and unreported.

1. Electronic Information.

Gilleran v. Township of Bloomfield, 227 N.J. 159 (2016)

The Supreme Court held that unfettered access to the video tape footage of a governmental facility's security system, on demand, for any or no reason, would be contrary to the legislative intent behind the security exceptions contained in [N.J.S.A. 47:1A-1.1](#) of the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#). One exception excludes from the definition of public records "emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or property or persons therein." Another exception excludes from disclosure "security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software." Plaintiff sought disclosure, under OPRA and the common law right of access, of video tape footage from a security camera overlooking a portion of property adjacent to the Bloomfield Town Hall. His stated interest stemmed, apparently, from his desire to view an area containing the mayor's parking space to see who had entered the building from that space. The trial court ordered release of the video, and the Appellate Division affirmed.. The Supreme Court held that when viewed together, the two exceptions advance a discernible public policy of keeping from public scrutiny, information that, if disclosed, would jeopardize or undermine the effectiveness of such systems for public buildings and the people within them. Central to this conclusion was the concern that access to the surveillance medium itself could compromise the system by disclosing its limitations and vulnerabilities. The court went on to observe, but not specifically consider, that the common law balancing test, including a demonstration of need, would be a better vehicle for determining such requests. The Chief Justice dissented. He said that

that a strict reading of OPRA does not support the interpretation given by the majority and that the majority decision effectively created an across-the-board exception from OPRA for the disclosure of security footage.

North Jersey Media Group, Inc. v. Township of Lyndhurst, 229 N.J.541 (2017)

North Jersey Media Group (NJMG) sought access to police dash cam recordings, use of force reports, investigative reports and witness statements under OPRA and the common law, related to a high speed chase and shooting of the driver that resulted in his death. The Supreme Court ruled that the use of force report was releasable under OPRA and the dash cam video was available under the common law, but the other investigative records were not subject to disclosure at the outset of the investigation.

Paff v. Galloway Township, 229 N.J. 340 (2017)

This case involved an OPRA request for the production of a “log” of emails sent by the municipal clerk and the police chief during a 2 week period. The log required the extraction of the recipient, date and subject line of each email. No other portion of the emails was requested. The Clerk refused to produce the “log” because it required the creation of a new document, one that did not previously exist. She even submitted a similar request to the GRC, which denied it for the same reason. The trial court ruled that the log could be “created” with a few keys strokes on the computer and, therefore, would not burden the records custodian. On appeal the Appellate Division reversed and agreed with the Clerk. However, the Supreme Court concluded that the “log” was nothing more than the production of “information” as that term is used in the Act, and, therefore, the log had to be created and produced. The Court acknowledged that even producing the minimal information requested could result in breach of some of the exceptions set forth in the Act, and therefore evaluation for redactions was appropriate.

Ganzweig v. Township of Lakewood, Docket No. A-4613-14T2, 2017 WL 3687522 (App. Div., Aug. 28, 2017)

The Appellate Division affirmed the trial court’s determination that Lakewood and the Ocean County Prosecutor’s Office had violated the Open Public Records Act (OPRA), N.J.S.A.47:1A-1 to -13, by withholding certain police dash cam videos and audio recordings of a stop by Lakewood police after which the driver was charged with possession of a controlled substance and related offenses. The court also ordered the release of documents involving an investigation of the officer, who was found to have falsified documents about the stop. The Appellate Division held that the police dash cam videos and audio recordings were required to be disclosed because they were made pursuant to the local police chief’s directive and, as a result,

met the “required by law” exception to the criminal investigatory record exemption. The court also held that even though the documents regarding the prosecutor’s investigation of the officer were related to an ongoing investigation, the prosecutor had not specifically shown how their disclosure would be “inimical to the public interest.” The court remanded the matter for a determination as to whether the prosecutor’s office had complied with the requirements of N.J.S.A. 47:1A-3(b) when issuing a press release related to the crime.

2. Public Agency Subject to OPRA.

Verry v. Franklin Fire District No. 1, 230 N.J. 285 (2017)

The Supreme Court upheld an Appellate Division ruling that a fire district, as an instrumentality of a political subdivision created by a municipality pursuant to N.J.S.A. 40A:14-70, is subject to OPRA. A constituent volunteer fire department, on the other hand, is an instrumentality of the fire district, and, as an instrumentality of an instrumentality, is not directly subject to OPRA. The fire district, upon receiving an OPRA request for the constitution and bylaws of the volunteer fire department, was obligated to provide access to those documents because they should have been on file or accessible to the district pursuant to its authority to supervise the volunteer fire department under N.J.S.A. 40A:14-70.1(a) or (b).

Serringer v. Choose New Jersey, Inc., Docket No. A-0208-15T1, 2017 WL 1193784 (App. Div. March 31, 2017)

Choose New Jersey, Inc., is a privately funded, non-profit corporation, founded in 2010, “to encourage and nurture economic growth throughout New Jersey, with a focus on [the State’s] urban centers.” Plaintiff submitted an OPRA and common law right of access request for correspondence between the corporation and State representatives. Choose New Jersey denied the request, arguing that it was not funded by the State, with no State control over any of its operations, employees or directors. The Appellate Division affirmed the trial court’s dismissal of the action, concluding that merely because Choose New Jersey worked closely with the State did not make it a State agency subject to OPRA or the common law right of access.

Stern v. Lakewood Volunteer Fire Department, Inc., Docket No. A-5085-14T2 (App. Div., Dec. 8, 2016)

The Appellate Division rejected the argument by several fire companies in a fire district that they were not public entities and therefore not bound by the requirements of the Open Public Records Act (OPRA), N.J.S.A.47:1A-1 to -13. The fire companies had existed independently before they were consolidated into the fire district, which is an acknowledged public entity. The

fire companies exist only under the authority of the State Legislature. There was no serious argument to be made that the companies were not subservient to the district and its publicly elected board of commissioners. The court also held, however, that although the fire companies were subject to OPRA, the plaintiff was not entitled to significant attorney's fees. There could be no enhancement to the lodestar because the issues involved were neither novel nor complex. The court in addition reduced the fees in an acknowledgment that the fire companies are not staffed in a way as to be quickly compliant with public record requests. The court also took note, as a basis for further reduction of the fees, that fire companies were restricted to acting only at the time of emergency and not for general public safety.

3. Redactions, Confidentiality, Privacy

In re New Jersey Firemen's Association Obligation to Provide Relief Application under OPRA, 230 N.J. 258 (2017)

After the decision in *Paff v. N.J. State Firemen's Association*, 431 N.J. Super.278 (App. Div. 2013)—in which the court held that the New Jersey Firemen's Association (Association) is a public entity—a request under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, was submitted to the Association seeking the production of information about financial relief provided to a member. The Association denied the request and then sought a declaratory judgment on the issue. The Supreme Court held that relief under the Declaratory Judgment Act, N.J.S.A. 2A:16-52, is available to the records custodian only before a decision has been rendered on the release of documents. Once the release has been denied, only the requestor can seek declaratory judgment. Production of the documents was properly denied, however, under OPRA's privacy exemption, N.J.S.A. 47:1A-1, and *Burnett v. County of Bergen*, 198 N.J.408 (2009).

Wolosky v. Sparta Board of Education, Docket No. A-4536-14T2 (App. Div., Jan. 13, 2017)

Wolosky asked the Sparta Board of Education to provide copies of invoices from the board's attorney for a three-month period. The board produced the documents under the Open Public Records Act (OPRA), N.J.S.A.47:1A-1 to -13, but redacted all references on the invoices to student initials. The court upheld the redactions because they were made in order to protect the students' reasonable expectations of privacy. The court also held that Wolosky was not entitled to disclosure of this information under the common law.

Scheeler v. New Jersey Department of Education, Docket No. A-3125-14T3 (App. Div., Jan. 19, 2017)

Plaintiff filed a request under Open Public Records Act (OPRA), N.J.S.A.47:1A-1 to -13, for copies of financial disclosure statements filed by members of the Woodbine Board of Education with the New Jersey Department of Education (DOE). The DOE provided the documents but redacted the board members' home street addresses. Both the Government Records Council (GRC) and later the Appellate Division sustained the redactions. The Appellate Division applied the balancing test set forth in *Doe v. Poritz*, 142 N.J. 1 (1995), emphasizing that disclosure would violate a citizen's reasonable expectation of privacy and that nonconsensual disclosure of home addresses could lead to people harassing board members at home and, thus, have a chilling effect on the interest of individuals in running for office. Further, the court held that there was no sufficient public need for the members' home street addresses, because the DOE had not redacted the city, state, and zip code information necessary to determine if board members met residency requirements. Deferring to the agency's expertise, the court concluded that the GRC decision was not contrary to law, was not arbitrary, capricious or unreasonable and was supported by substantial evidence.

Smith v. Swedesboro-Woolwich School District Board of Education, Docket No. A-0840-15T4 (App. Div. March 6, 2017)

Plaintiff sought minutes of a closed session meeting of the board of education at which continuation of the superintendent's contract was discussed. Aspects of the minutes were redacted under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, as exempt from disclosure as a matter of the privacy of personnel, and also under the attorney-client and advisory, consultative, deliberative privileges. Plaintiff challenged the redactions, and the court agreed that the redactions were appropriate.

Paff v. Bergen County, Docket No. A-1839-14T1 (App. Div. March 13, 2017)

Paff requested a log of internal affairs complaints filed against Bergen County Corrections officers under both the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and the common law right of access. The County Sheriff's officers released records in a redacted form, excluding the names of the complainants and individual officers subject to complaints. Paff challenged the redactions, and the county asserted that the redacted information was exempt from disclosure as confidential, in compliance with the Attorney General's Internal Affairs Policies and Procedures (the Guidelines), adopted by the Bergen County Sheriff's Office. The court held that the Guidelines were adopted pursuant to a statutory mandate and that officers must comply with them. Thus, Paff was not entitled to receive the names of the complainants and

officers subject to complaints. Although the county officers had inadvertently neglected to explain the basis of their redactions as required by OPRA, the court rejected Paff's demand for attorney's fees, saying that there was no "unjustifiable denial of access," and that "[f]ees are awarded when the records response is ignored, trammeling OPRA's objective of a transparent government." Applying the six-part balancing test of *Loigman v. Kimmelman*, 102 N.J. 98, (1986), the court also found that Paff was not entitled to the records under the common law.

Wolosky v. Somerset County, Docket No. A-1024-15T4 (App. Div., March 30, 2017)

Plaintiff sought copies of records requests made by citizens under the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#). The county provided the documents, but redacted the requestors' phone numbers, street addresses and email addresses from the documents it produced. The Appellate Division upheld the Law Division's decision sustaining the county's redactions, finding that a requestor for public records did not relinquish its right to privacy in the phone numbers and addresses. The Court also ruled that plaintiff had failed to sustain his claim to the unredacted information under the common law right of access.

4. Confidentiality Provisions in Settlement Agreement.

New Jersey Intergovernmental Insurance Fund v. Selecky, Docket No. A-1292-15T1 (App. Div., July 11, 2017)

The New Jersey Intergovernmental Insurance Fund (NJJIF) sought liquidated damages against Selecky for violation of the confidentiality provisions of a settlement agreement between Selecky and the NJJIF. A third-party blogger had obtained a copy of the settlement agreement through the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#), and published it. Selecky then made comments to the Star Ledger newspaper about a municipal court action that had been dismissed on appeal and that formed the basis for her malicious prosecution action, which was the subject of the settlement and the confidentiality agreement. The court noted that "parties [to an] agreement cannot override the public's right of access under OPRA. . . , but they will still be bound to keep information confidential pursuant to a negotiated agreement, even if that information is later disclosed under OPRA." However, the court found that on its face, the settlement agreement applied only to the malicious prosecution action, and that Selecky was free to comment on the underlying municipal court matter without breaching the confidentiality agreement.

5. Criminal Investigatory Records; Vaughn Index

Paff v. New Jersey State Police, Docket No. A-2877-15T2 (App. Div., Aug. 7, 2017)

Paff filed a request under the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#), for State Police investigative records about an alleged sexual misconduct investigation of a county sheriff, which request was denied. In his complaint, Paff requested access to the documents only under the common law right to know, or, in the alternative, a “Vaughn Index” of the withheld documents. The Appellate Division upheld the denial of access under the common law because plaintiff’s general interest in a matter that might involve a public official did not outweigh the confidentiality of a criminal investigation, protection of witnesses, or the privacy interests of the sheriff or others involved. Moreover, there was no requirement to provide a Vaughn Index, because the index itself could create the same issues. The court distinguished this request from one for production of dash-cam videos. Note: compare to the dash-cam cases cited above.

6. Draft Appraisal Report; Deliberative Process and Attorney Work Product Privileges

Bay Head Mantoloking Land Co. v. Konopada, Docket No. A-4347-15T1 (App. Div., Aug. 14., 2017)

In the context of the DEP-sponsored dune enrichment project following Hurricane Sandy, the Appellate Division upheld the denial of a request under Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#), and the common law for draft appraisals of properties for which *bona fide* negotiations and condemnation proceedings had not yet begun. Both the attorney work product privilege and the deliberative process privilege were valid reasons for the denial. The court distinguished *Trachtenberg v. Township of West Orange*, [416 N.J. Super. 354 \(App. Div. 2010\)](#), in which the court held that after two years of debate without a decision as to whether to proceed with the acquisition, the privileges no longer applied because the governing body had not engaged in negotiations and was unlikely to do so in the near future. Here, because a vast majority of the needed easements had already been voluntarily conveyed and the DEP was involved, it appeared likely that negotiations for the remaining easements would proceed imminently.

Paff v. Cape May County Prosecutor’s Office, Docket No. A-4604-14T1 (App. Div., Nov. 17, 2016)

John Paff filed a demand for documents, under both the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#), and the common law right of access to public records, from the Cape May County Prosecutor’s Office. The request sought correspondence from the

prosecutor to the Borough of Wildwood Crest about certain police officers. The trial court determined that the documents were exempt from release under OPRA, because they involved inter-agency advisory, consulting or deliberating materials, criminal investigatory records and records generated on behalf of a public employee concerning a grievance by or against an employee. However, the court determined the records should be released pursuant to the common law right to know, and the prosecutor appealed. On appeal, the prosecutor did not dispute that the letters were public documents or that Paff had the requisite standing to make the request, so the App. Div. reviewed only whether Paff's right to the documents outweighed the prosecutor's interest in preventing disclosure. The Appellate Division remanded the matter to the trial court to supplement and clarify its findings on the various factors to be considered by *Loigman v. Kimmelman*, [102 N.J. 98 \(1986\)](#), with both parties then having the right to submit supplemental briefs before a final determination.

L.R., Etc. v. Camden City Public School District / L.R., Etc. v. Parsippany-Troy Hills Township Public School District, et al. / The Innisfree Foundation v. Hillsborough township Board of Education / The Innisfree Foundation v. Cherry Hill Board of Education, ___N.J. Super. ___ (App. Div., Oct. 17, 2017)

The App. Div. consolidated these four related appeals in which the various plaintiffs sought to obtain from the defendant school districts copies of settlement agreements and records dealing with the provision of special services to other qualified children. The plaintiffs included a nonprofit advocacy organization for disabled children and the mother of a disabled student in the Camden Schools. The respective school districts refused to provide the requested documents citing statutory and regulatory provisions that protect the privacy of school students. The App. Div. determined that the plaintiffs were entitled to the documents, although in redacted form so that the identity of the students remained confidential. On remand the App. Div. directed that the documents could only be disclosed to the advocacy groups, as redacted, if (1) the requester was a "bona fide researcher" within the intended scope of N.J.A.C. 6A:32-7.5(e)(16) or (2) could obtain a court order authorizing such access under N.J.A.C. 6A:32-7.5(e)(15); and further provided that such records shall not be turned over until the districts shall have provided reasonable notice to the affected student's parents or guardians. As to the Camden case, the App. Div. remanded for further proceedings with respect to the documents sought, but affirmed the trial court's grant of access concerning records that exclusively mentioned the requestor's child. The App. Div. stayed its decision to allow the parties to appeal to the Supreme Court.

7. Overbroad, Excessive or Abusive Requests

Serringer v. Office of the Governor of the State of New Jersey, Docket No. A-0837-15T2 (App. Div., June 16, 2017)

Serringer submitted a request under the Open Public Records Act (OPRA), [N.J.S.A.](#)

[47:1A-1 to -13](#), to the Office of the Governor for all correspondence between that office and Choose New Jersey, Inc. between January 1, 2015 and April 24, 2015. The request did not include any specific subject matter. The Appellate Division affirmed the trial court's ruling that the request was overbroad and invalid. The absence of a subject matter meant that the office would have to conduct a search of all files of current and past employees of the office to find those addressed to, or received from, Choose New Jersey, Inc. This would be unduly burdensome.

Gordon v. City of Orange Custodian of Records, Docket No. A-4869-13T2, A-1272-14T1 (App. Div., June 23, 2017)

The Appellate Division reversed a decision of the Government Records Council (GRC) and held that the custodian of records had acted “knowingly and willfully” when it denied a request under the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#). The request sought records of disability insurance payments received and sick days accumulated by the City Clerk within a specified time period. The custodian claimed that the records “involve[d] issues regarding ongoing litigation,” even though there was no pending litigation. The request was characterized as overbroad, but the GRC found that it was not and issued an interim order requiring the release. The matter was remanded for the imposition of appropriate penalties.

Township of Teaneck v. Jones, Docket No. BER-C-14-17 (Ch. Div., Contillo, P.J. Mar. 9, 2017)

In response to an avalanche of requests initiated by a single individual (380 filed in a two-month period) under the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#), the Township of Teaneck and its records custodian sought a preliminary injunction enjoining the requestor from making any further records requests without leave of the court. Judge Contillo found that the “accumulated volume of the requests is the size and heft of a phone book,” and noted the assertion that the Custodian and staff would “have to expend at least 1,250 hours, not including legal review of redactions.” Nonetheless, the court found “no well-settled legal right of a custodian to be affirmatively excused from responding to OPRA requests considered burdensomely voluminous.” The court also held that OPRA requests, no matter how overwhelming, cause no immediate and irreparable harm. The court acknowledged that although a custodian could deny a particular request on the grounds of disruption of operations, or could impose a reasonable special service charge to be prepaid by the requestor, there was a possibility that the municipality would be subjected to attorney's fees if such actions were later deemed to be improper. However, the possibility of attorney's fees was not irreparable harm. The court noted that if a requestor engages in harassing conduct, relief may be available under civil law or the criminal code. Despite its denial of an injunction in this case, the court noted the potential for a change in the rights of custodians to seek declaratory and injunctive relief because

certification has been granted in *IMO New Jersey Firemen's Association Obligation to Provide Relief Under Open Public Records Act*, [443 N.J. Super. 238](#) (App. Div.), *certif. granted* 224 N.J. 528 (2016).

8. Non-Existent Record

Williams v. Passaic County Prosecutor's Office, Docket No. A-5116-14T3 (App. Div. Feb. 23, 2017)

Under the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#), the Passaic County Prosecutor's Office was not obligated to produce a transcript of a 911 call. Appellant had filed a denial of access complaint with the GRC, which rejected the action based on the absence of a transcript of the 911 call. The App. Div. affirmed, holding that the requestor was entitled to the actual recording, if accessible, but could not force the public agency to produce a transcript that was not in existence at the time of request.

9. Access To Third-Party OPRA Requests

Scheeler v. Office of the Governor, 448 N.J. Super. 333 (App. Div. 2017)

Requests under the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#), are themselves public records subject to disclosure under OPRA. The requestor sought copies of OPRA requests submitted to the Governor's Office and other State agencies about Bridgegate. The Appellate Division found that OPRA requests are themselves government records because they are received and maintained by public entities and because there is no statutory or regulatory exemption for them. The court ruled that broad language to the contrary in *Gannett NJ Partners, LP v. County of Middlesex*, [379 N.J. Super. 205 \(App. Div. 2005\)](#), was misplaced because the language in that opinion was merely dicta and that case never directly addressed the issue before the court here.

10. Willful Violations

North Jersey Media Group, Inc. v. State, Office of the Governor, 451 N.J. Super. 282 (App. Div. 2017)

The Appellate Division held that a trial court has the statutory authority to impose civil penalties for a willful violation of the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#). The court further held that the trial court erred in denying a request for relief in aid of litigants' rights. Over the course of a number of months, North Jersey Media Group, Inc. (Media), publisher of the Bergen Record, filed a number of requests under OPRA and the common law, for records concerning the so-called Bridgegate matter. The failure of the Office of the Governor to produce any records resulted in various complaints seeking turnover of the

records, legal fees and other penalties. In remanding the matter to the trial court, the Appellate Division found that the Governor's Office had violated a prior court order by failing to provide a certification by someone with personal knowledge about the search for documents and the trial court was therefore obligated to grant Media's motion for relief in aid of litigants' rights under [Rule 1:10-3](#). Further, the court determined that pursuant to [N.J.S.A. 47:1A-11](#), the trial court has the same authority as the Government Records Council to impose civil penalties when, under the totality of the circumstances presented, there is a knowing and willful violation of OPRA and an unreasonable denial of access to public records.

Johnson v. Borough of Oceanport, Docket No. A-3165-T1 (App. Div., Oct. 27, 2016)

The Appellate Division affirmed the denial by Government Records Council (GRC) of Sharkey's request for reconsideration of a 2009 decision that Sharkey had knowingly and willfully violated the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#), and an order that he pay a civil penalty. The basis for the reconsideration request was a 2011 GRC decision holding that Sharkey had not willfully violated OPRA in connection with other records requests filed after the ones adjudicated in 2009. The court agreed with the GRC that Sharkey filed the request grossly out of time—more than two years after receiving the decision in the 2011 case. It further noted that the 2011 decision was based on facts different from the 2009 decision.

11. Mootness

Stop & Shop Supermarket Co., LLC v. Bergen County Planning Board, 450 N.J. Super. 286 App. Div. 2017)

Stop & Shop filed a request with Bergen County under the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#), for documents in connection with a County Planning Board proceeding to which it was a competitor-objector. It received the documents, but shortly thereafter filed a declaratory judgment action seeking the documents and to argue that a delay in the production of documents deprived it of a fair hearing and due process in its appeal of the planning board action to the Board of Freeholders. The court determined that any action on the OPRA request was moot because plaintiff had already received the documents, and a declaratory judgment action was not appropriate because there was no case or controversy. No legal fees under OPRA were due because plaintiff had received the documents before beginning suit and, therefore, it was neither a prevailing party nor a catalyst. In 38 Local Government Law Review 37 (January 2015) we summarized the Law Division opinion in this case. The Appellate Division affirmed in a published decision. The published opinion omitted discussion of facts and conclusions in a related case between the same parties that was appealed separately. The unpublished decision of the Appellate Division can be found at https://scholar.google.com/scholar_case?case=3332883790304370105.

12. Attorneys Fees.

Grieco v. Borough of Haddon Heights, 449 N.J. Super. 513 (Law Div. 2015)

Haddon Heights responded to a request under the Open Public Records Act (OPRA) by inadvertently sending responsive documents from 2015 but not also from 2014 as requested. Without further communication to the borough, the requestor filed suit, but within a few days thereafter, the remaining documents were voluntarily supplied by the borough. The requestor's application for attorney's fees was denied. The court found that the requestor had a statutory obligation to cooperate with the municipality in resolving disputes and therefore had an obligation to advise the municipality of the missing documents before filing suit. The requestor was not the catalyst for the production of the additional documents and therefore was not a "prevailing party" within the meaning of [N.J.S.A. 47:1A-6](#). The case was decided in 2015, but approved for publication in 2017.

D.F. v. Collingswood Bd. of Ed., Docket No. A-5311-14T2 (App. Div., Nov. 10, 2016)

The Appellate Division dismissed an appeal without prejudice because the order on appeal was not a final judgment. The trial court order was issued in a case brought under the Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#), after an *in camera* review of bills submitted by the attorney for the Collingswood Board of Education. Citing attorney-client privilege, the board had redacted the bills to delete the names of the persons with whom the attorney had spoken or corresponded. The trial court reasoned that "learning with whom an attorney is speaking is just as important and in some cases even more important than learning what an attorney is researching."

Collingswood Bd. Ed. v. McLoughlin, Docket No. A-2475-14T1 (App. Div., Oct. 21, 2016)

The Open Public Records Act (OPRA), [N.J.S.A. 47:1A-1 to -13](#), does not permit a public entity to file a declaratory judgment action against requestors in lieu of providing a prompt response to the request. A reporter and editor were denied summary judgment dismissing a declaratory judgment action by the Collingswood Board of Education, but were granted access to the requested records and awarded attorney's fees. The Appellate Division reversed the denial of the summary judgment. It remanded the matter to the trial court for a determination as to whether the fee award should be adjusted to account for work unnecessarily expended by the requestors in litigating the declaratory judgment action. But see: *In re New Jersey Firemen's Association Obligation to Provide Relief Application under OPRA*, 230 N.J. 258 (2017).