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October 13, 2011

File No. 01121-0001

Richard Gutman, P.C.
55 Warfield Street
Montclair, New Jersey 07045-1116

**Re: NEW JERSEY STATE FIREMEN'S ASSOC.
September 23, 2011 Records Request by John Paff**

Dear Mr. Gutman:

This firm serves as general counsel to the New Jersey State Firemen's Association ("Association") and was timely asked to review a September 23, 2011 request by Mr. Paff concerning access to records. Mr. Paff questioned whether the Association is bound by the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (the "Act") Please accept this letter on behalf of the Association. As noted below, the Association does not have a "records custodian" as required of public agencies under the Act.

First, it should be noted, that well prior to the Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489 (2011), the Association requested an Advisory Opinion from the Government Records Council ("GRC") as to whether or not the Association is subject to the Act. On December 30, 2008, the GRC, in a written response, declined to issue an Advisory Opinion. A copy of the GRC's response is attached hereto.

The Association has never considered itself bound by the Act. As noted, it has never named or appointed a records custodian. Further, it has never adopted an OPRA form. In comparing this Association to the New Jersey League of Municipalities there are great differences between the organizations. While both the Association and the League are established by statute, a review of the Association's 1885 enabling statute reveals that local firemen's associations may be established by fire companies and departments. There is no municipal (i.e. government) involvement in the establishment of a local fire relief association. As such, the firemen's relief associations are different that the League of Municipalities which is formed by municipalities (i.e. public entities) by an affirmative act of a public body. N.J.S.A. 40:48-22.

Public Law 1885, c. 122 states that the local relief associations may form a state entity to coordinate their efforts. The law also establishes that the Legislature may alter, modify or repeal

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the charters of relief associations. In effect, the enabling law simply establishes a specific type of nonprofit association. The Association is not established as an office, board, bureau or commission with government powers as required by the definition of a public agency under the Act.

The formation of the relief associations differs greatly from the formation of the League in that the statute simply authorizes individuals to form local relief organizations. The enabling statute does not permit or require a government entity to take any action in relation to providing relief services. This difference between authorization of individuals versus state actors is fundamental when considering how these organizations are to be impacted by other legislation.

As to the other various points raised in the Fair Share decision, there are clear differences when evaluating the characteristics the court explored in ultimately finding that the League qualified as a public agency under the Act. Unlike the League, the Association is not funded by tax dollars. The League is funded by its members' dues which are, in turn, funded by local tax dollars; conversely, the Association by out of state chartered fire insurance premiums.

Additionally, while employees of the Association can qualify for a pension, unlike the League, the pension is not part of the State pension systems. Further, while the League is comprised entirely of public employees, the Association's membership is primarily composed of the numerous members of non-profit volunteers fire companies. Finally, unlike the League, the Association does not institute legal action on behalf of its members or lobby for changes in state law, other than to protect the integrity of the local relief funds from malfeasance or neglect by its own members.

Based on the above differences, the Association is not likely to be considered a public agency subject to the Act. Again, the Association does not have a records custodian or an OPRA request form and attempted to gain guidance from the GRC on this very issue.

While it is noted that the Association does not believe it is bound by OPRA and, as acknowledged, the Association does not participate in any state pension programs, because Mr. Paff is a Life Member of the Firemen's Association, the attached materials are provided to demonstrate the requirements of the pension offered to employees of the Association. **Individual pension information is not available for dissemination.** Additionally, as a Life Member of the Firemen's Association, attached is a copy of the Association's legal bills for March 2011.

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If you have any questions regarding this letter please feel free call on upon me so we can discuss further.

Very truly yours,


GEORGE M. MORRIS

Enclosures

cc: George H. Heflich Sr., President
Frank P. Cavallo, Esq., Association Counsel