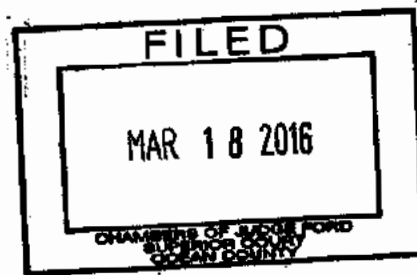


Anthony H. Ogozalek, Jr.  
Beckman Ogozalek Londar  
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New Jersey ID No. 037022006  
Attorney for Plaintiff



NEW JERSEY FOUNDATION FOR  
OPEN GOVERNMENT, INC.

Plaintiff

vs.

LITTLE EGG HARBOR FIRE  
DISTRICT #3 RECORDS  
CUSTODIAN

Defendant

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, CIVIL PART :  
OCEAN COUNTY

DOCKET NO.

8714-16

Civil Action

**ORDER TO SHOW CAUSE**

THIS MATTER being brought before the Court by Anthony H. Ogozalek, Jr. of Beckman Ogozalek & Londar, Attorney for Plaintiff, seeking relief by way of summary action pursuant to R.4:67-1(a), based on the facts set forth in the Verified Complaint and supporting papers filed herewith; and the Court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and for good cause shown,

IT IS on this 18<sup>th</sup> day of March, 2016 ORDERED that the Defendant Little Egg Harbor Fire District #3 Records Custodian appear and show cause on the 20<sup>th</sup> day of May, 2016 before the Honorable Marlene Lynch Ford, A.J.S.C., Superior Court, County of Ocean, 118 Washington Street. Toms River, New

Jersey at 9:00 o'clock in the AM noon or as soon thereafter as Plaintiff can be heard, why judgment should not be entered:

a. Declaring that the Little Egg Harbor Fire District #3 Records Custodian, violated OPRA, by failing to either i) deny Plaintiffs request, ii) grant the request, iii) seek clarification of the request or iv) seek an extension of time within which to properly respond to the request, violated N.J.S.A. 47:1A-5(i) which requires such a response within seven business days of receipt of a request.

b. Ordering the Little Egg Harbor Fire District #3 Records Custodian to provide Plaintiff with all records within the scope of Plaintiff's request and if any of the responsive records are suppressed in whole or part;

i. Ordering Defendant to provide both the Court and Plaintiff with a privilege log containing sufficient detail to enable the reader to assess the applicability of the claimed justifications for each redaction or suppression; and

ii. Ordering Defendant to submit unredacted versions of any records to which access was denied in whole or part to the Court for an *in camera* review;

c. Ordering Custodian to pay Plaintiff's costs and a reasonable attorney fee in accordance with N.J.S.A. 47:1A-6.

And it is further ORDERED that:

1. A copy of this order to show cause, verified complaint and all supporting affidavits or certifications submitted in support of this application be served upon the Defendants personally or by certified mail, return receipt requested, within 7 days

of the date hereof, in accordance with R.4:4-3 and R.4:4-4, this being original process pursuant to R.4:52-1(b).

2. Plaintiffs must file with the Court their proofs of service of the pleadings on the Defendant no later than three (3) days before the return date.

3. Defendants shall file and serve a written answer and opposition papers to this order to show cause and the relief requested in the verified complaint and proof of service of the same by April 22, 2016. The answer and opposition papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of the Honorable Judge listed above.

4. Plaintiffs must file and serve any written reply to the Defendants' order to show cause opposition by May 6, 2016. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of the Honorable Judge listed above.

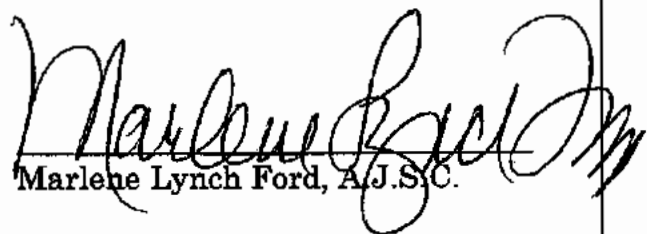
5. If the Defendant does not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiff files a proof of service and a proposed form of order at least three days prior to the return date.

6. If the Plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the Court no later than three (3) days before the return date.

7. Defendant take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or you attorney, must file a written answer and opposition papers and proof of service before the return date of the order to show cause. These documents must be filed with the Clerk of the Superior Court in the county listed above. A list of these offices is provided. Include a \$175 filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your answer and opposition papers to the Plaintiffs' attorney whose name and address appear above, or to the Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer and opposition papers (with the fee) or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. Legal Services and Lawyer Referral Services may be reached, respectively, at 732-240-3666 and 732-341-2727.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the Court and parties are advised to the contrary no later than 5 days before the return date.

  
Marlene Lynch Ford, A.J.S.C.

Anthony H. Ogozalek, Jr.  
Beckman, Ogozalek & Londar  
1200 Laurel Oak Road, Suite 104  
Voorhees Township, NJ 08034  
Phone: (856) 545-4542  
Fax: (856) 545-7230  
E-mail: aogozalek@beckmanlawgroup.com  
New Jersey ID No. 037022006  
Attorney for Plaintiff

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|  |   |  |
|--|---|--|
| NEW JERSEY FOUNDATION FOR<br>OPEN GOVERNMENT, INC.         | : | SUPERIOR COURT OF NEW JERSEY<br>LAW DIVISION, CIVIL PART : |
| Plaintiff  | : | OCEAN COUNTY   |
| vs.  | : | DOCKET NO.   |
| LITTLE EGG HARBOR FIRE<br>DISTRICT #3 RECORDS<br>CUSTODIAN | : | Civil Action   |
| Defendant  | : | <b>VERIFIED COMPLAINT</b>                                  |

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Plaintiff New Jersey Foundation for Open Government, Inc. ("the Foundation" or "Plaintiff") by way of complaint against the Little Egg Harbor Fire District #3 Records Custodian ("Custodian") states as follows:

**Parties**

1. Plaintiff New Jersey Foundation for Open Government, Inc. ("the Foundation") is a non-profit, New Jersey corporation which has as its mission to increase transparency in New Jersey's state, county and local governments.
2. The Foundation is a "requestor" within the meaning of N.J.S.A. 47:1A-6.

3. Defendant Little Egg Harbor Fire District #3 Records Custodian ("Custodian") is a "custodian of a government record" for the Fire District as that term is defined by N.J.S.A. 47:1A-1.1.

### COMMON ALLEGATIONS

4. The Fire District's Internet site at <http://www.njfiredistricts.org/littleeggharborfiredistrict3> contains no reference to OPRA, does not provide the public with the District's OPRA request form nor does it identify the District's OPRA custodian. But the site does contain a "2015 Approval Certification," a true copy of which is attached as Exhibit 1, that identified John O'Brien as the Chairman of the Board of Fire Commissioners and discloses his e-mail address as [jobrien@station70.net](mailto:jobrien@station70.net) and fax number as 609-296-3976.

5. On December 18, 2015, the Foundation, through its Affirmative Litigation Committee, emailed an Open Public Records Act (OPRA) request, a true copy of which is attached as Exhibit 2, to Chairman O'Brien at [jobrien@station70.net](mailto:jobrien@station70.net).

6. After not having received a response to its December 18, 2015 request, Plaintiff faxed a copy of it as a follow-up request to 609-296-3976 on January 17, 2016. True copies of the faxed version of the request and the fax transmission receipt are attached, respectively, as Exhibits 3 and 4.

7. Further, on January 6, 2016, Plaintiff e-mailed another copy of the request to Chairman O'Brien at [jobrien@station70.net](mailto:jobrien@station70.net) and copied Richard M. Braslow, Esq., who serves as counsel to the Fire District, on that e-mailed correspondence. (See the bottom of the second page of Exhibit 2.)

8. Despite Plaintiff's efforts, as outlined in ¶¶ 5 - 7 above, Plaintiff has not yet received any response or responsive records from the Custodian.

**FIRST COUNT**  
*(Violation of OPRA for failure to respond)*

9. Plaintiff repeats and incorporates all preceding paragraphs as if fully set forth herein.

10. The District's Records Custodian has not responded to the Plaintiff's OPRA or its follow up requests within seven (7) business days of receipt of the request as required by N.J.S.A. 47:1A-5(i).

**WHEREFORE**, Plaintiff demands judgment:

A. Declaring that Custodian, by failing to respond to the OPRA request, violated OPRA.

B. Ordering Custodian to promptly and lawfully respond to Plaintiff's OPRA request.

C. Ruling that Plaintiff is the prevailing party and awarding Plaintiff a reasonable attorney fee and costs.

D. Such other relief as the Court deems equitable and just.

**SECOND COUNT**  
*(Requiring disclosure under common law)*

11. Plaintiff repeats and incorporates all preceding paragraphs as if fully set forth herein.

12. Under the common law right of access, Plaintiff's and the public's interest in disclosure of requested documents exceed the governmental interest in keeping those records confidential.

**WHEREFORE**, Plaintiff demands judgment:

- E. Ordering the Custodian to disclose to Plaintiff the requested documents.
- F. Awarding Plaintiff its costs.
- G. Such other relief as the Court deems equitable and just.

**Designation of Trial Counsel**

Plaintiffs designate Anthony H. Ogozalek, Jr. as trial counsel

**Certification Pursuant to R.1:38-7(b)**

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future

**Certification Of No Other Actions**

Pursuant to R.4:5-1, it is hereby stated that the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, I know of no other parties that should be joined in the above action. In addition, I recognize the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

Dated: February 23, 2016

\_\_\_\_\_  
Anthony H. Ogozalek, Jr.  
Beckman Ogozalek & Londar



## **Verification**

John Paff, of full age, certifies as follows:

1. I am the a member of the Board of Directors of the New Jersey Foundation for Open Government, Inc. and am fully familiar with the facts underlying this matter against the Little Egg Harbor Fire District #3. All of the facts stated in this Verified Complaint to which this Verification is attached are true, and as to those facts that are alleged on information and belief, I believe them to be true.

2. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: February 23, 2016

\_\_\_\_\_  
John Paff

# **EXHIBIT 1**

# 2015 APPROVAL CERTIFICATION

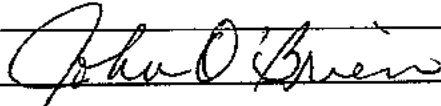
## LITTLE EGG HARBOR TWP. NO. 3

### FIRE DISTRICT BUDGET

**FISCAL YEAR:** January 1, 2015 to December 31, 2015

It is hereby certified that the Fire District Budget, including all schedules appended hereto, are a true copy of the Annual Budget approved by resolution by the Board of Commissioners of the Fire District, at an open public meeting held pursuant to N.J.A.C. 5:31-2.4, on the 12th day of December, 2015.

It is further certified that the recorded vote appearing in the resolution represents not less than a majority of the full membership of the Board of Commissioners thereof.

|                      |   |             |              |
|----------------------|---|-------------|--------------|
| Officer's Signature: |  |             |              |
| Name:                | JOHN O'BRIEN  |             |              |
| Title:               | CHAIRMAN  |             |              |
| Address:             | 830 RAILROAD DRIVE<br>PARKERTOWN, NJ 08087  |             |              |
| Phone Number:        | 609-296-2800  | Fax Number: | 609-296-3976 |
| E-mail address:      | JOBRIEN@STATION70.NET   |             |              |

# **EXHIBIT 2**



New Jersey Foundation For Open Government <njfogalc@gmail.com>

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## OPRA REQUEST 12/18/15 - Little Egg Harbor Fire District 3

2 messages

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New Jersey Foundation For Open Government <njfogalc@gmail.com>

Fri, Dec 18, 2015 at 12:29 AM

To: jobrien@station70.net

New Jersey Foundation for Open Government  
Affirmative Litigation Committee  
P.O. Box 271  
Jamesburg, NJ 08831  
**(Please respond to [njfogalc@gmail.com](mailto:njfogalc@gmail.com))**

To The Custodian of Records:

Please accept this as a request for government records. Please note that the Open Public Records Act (OPRA) is not the only basis for the request. Entitlement to the records sought is under both OPRA and the Common Law right of access. Please acknowledge receipt of this email. Thank you.

Requested Records

- 1. A copy of any correspondence Little Egg Harbor Township Fire District #3 received from the New Jersey Foundation for Open Government's (NJFOG) Affirmative Litigation Committee between April 14, 2015 and April 21, 2015 informing the Board of Fire Commissioners of Judge Vincent J. Grasso's written decisions in NJFOG's court case against the Island Heights Board of Education.*
- 2. The minutes of the nonpublic (closed or executive) meetings held by the Board of Fire Commissioners during the time period 4/1/2015 to 12/1/2015 for which minutes are available in either full or redacted form.*
- 3. For each nonpublic meeting for which minutes are responsive to #2 above, the resolution, passed in accordance with N.J.S.A. 10:4-13, that authorized the nonpublic meeting.*
- 4. To the extent that they are not duplicative of the records responsive to #3 above, all resolutions that, in accordance with N.J.S.A. 10:4-13, authorized all Board of Fire Commissioners nonpublic meetings held on or*

*after April 1, 2015.*

Sincerely,

John Paff, Chairperson  
For NJFOG's Affirmative Litigation Committee

John Paff, Chairperson  
John P. Schmidt, Member  
Donald Baldwin, Member

---

**New Jersey Foundation For Open Government** <njfogalc@gmail.com> Wed, Jan 6, 2016 at 2:17 AM  
To: jobrien@station70.net  
Cc: braslowesq6@aol.com

Hello,

This email is to follow-up on the status of this request. Please advise.

Thank you,

NJFOG AL Committee

# **EXHIBIT 3**

## OPRA request follow-up.

The following OPRA request was sent to your agency via e-mail on 12/18/2015 and to date we have not yet received a response. Please advise by contacting us at [njfogalc@gmail.com](mailto:njfogalc@gmail.com).



**NEW JERSEY FOUNDATION  
FOR OPEN GOVERNMENT**

New Jersey Foundation for Open Government  
Affirmative Litigation Committee  
P.O. Box 271  
Jamesburg, NJ 08831  
**(Please respond to [njfogalc@gmail.com](mailto:njfogalc@gmail.com))**

To The Custodian of Records:

Please accept this as a request for government records. Please note that the Open Public Records Act (OPRA) is not the only basis for the request. Entitlement to the records sought is under both OPRA and the Common Law right of access. Please acknowledge receipt of this email. Thank you.

### Requested Records

- 1. A copy of any correspondence Little Egg Harbor Fire District #3 received from the New Jersey Foundation for Open Government's (NJFOG) Affirmative Litigation Committee between April 14, 2015 and April 21, 2015 informing the Board of Fire Commissioners of Judge Vincent J. Grasso's written decisions in NJFOG's court case against the Island Heights Board of Education.*
- 2. The minutes of the nonpublic (closed or executive) meetings held by the Little Egg Harbor Fire District during the time period 4/1/2015 to 12/1/2015 for which minutes are available in either full or redacted form.*
- 3. For each nonpublic meeting for which minutes are responsive to #2 above, the resolution, passed in accordance with N.J.S.A. 10:4-13, that authorized the nonpublic meeting.*
- 4. To the extent that they are not duplicative of the records responsive to #3 above, all resolutions that, in accordance with N.J.S.A. 10:4-13, authorized all Fire District nonpublic meetings held on or after April 1, 2015.*



# **EXHIBIT 4**

TRANSMISSION VERIFICATION REPORT

TIME : 01/17/2015 18:42  
NAME : GENERAL PALLET LLC  
FAX : 9088065555  
TEL : 9082381000  
SER. # : U63274A4J603976

|              |                 |
|--------------|-----------------|
| DATE, TIME   | 01/17 18:41     |
| FAX NO./NAME | 16092963976     |
| DURATION     | 00:00:41        |
| PAGE(S)      | 03              |
| RESULT       | OK              |
| MODE         | STANDARD<br>ECM |

**Anthony H. Ogozalek, Jr.  
Beckman, Ogozalek & Londar  
The Greens of Laurel Oak  
1200 Laurel Oak Road, Suite 104  
Voorhees Township, NJ 08034  
Phone: (856) 545-4542  
Fax: (856) 545-7230  
E-mail: aogozalek@beckmanlawgroup.com**

February 23, 2016

Hon. Marlene Lynch Ford, A.J.S.C.  
Superior Court of New Jersey - Law Division  
100 Hooper Avenue  
Toms River, NJ 08753

RE: New Jersey Foundation for Open Government, Inc., v. Little Egg Harbor Fire District #3 Records Custodian.

Dear Judge Ford:

We are submitting this Letter Brief in lieu of a more formal brief in support of the First Count of the Verified Complaint, which seek relief under the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1, et seq., and the Second Count, which seeks relief under the common law right of access. First, we discuss the facts of this case. Second, we discuss legal arguments why this matter should proceed in a summary manner and why Plaintiff is entitled to the relief requested.

#### **STATEMENT OF FACTS**

The Court is respectfully referred to the Verified Complaint for a complete recitation of the facts. In summary, however, Plaintiff New Jersey Foundation for Open Government, Inc. ("Foundation") submitted a records request to Defendant Little Egg

Hon. Marlene Lynch Ford, A.J.S.C.

February 23, 2016

Page 2 of 6

Harbor Fire District #3 Records Custodian "(Custodian) and Custodian has failed to respond to the Foundation's repeated efforts to obtain a response to its request.

## LEGAL ARGUMENT

### *POINT I*

#### *THE FIRST COUNT OF PLAINTIFF'S ACTION SHOULD PROCEED IN A SUMMARY MANNER.*

"A person who is denied access to a government record by the custodian of the record, . . . may institute a proceeding to challenge the custodian's decision by filing an action in Superior Court." N.J.S.A. 47:1A-6. Once instituted, "[a]ny such proceeding shall proceed in a summary or expedited manner." Id. "This statutory language requires a trial court to proceed under the procedures prescribed in R. 4:67." Courier News v. Hunterdon County Prosecutor's Office, 358 N.J. Super. 373, 378 (App. Div. 2003). Any such action must be initiated by Order to Show Cause, supported by a verified Complaint. Id. (citing R. 4:67-2(a)). Here, because OPRA authorizes actions under it to proceed in a summary manner, and Plaintiff's request for an order to show cause is supported by a verified complaint, the relevant documents have been provided and certified as exhibits to the Verified Complaint, and the relevant facts should not reasonably be disputed, the order to show cause should be granted so this matter may proceed in a summary manner. R. 4:67-2(a).

Hon. Marlene Lynch Ford, A.J.S.C.

February 23, 2016

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**POINT II**

*DEFENDANT CUSTODIAN VIOLATED OPRA BY FAILING TO RESPOND TO  
PLAINTIFF'S REQUEST AND PROVIDE REQUESTED RECORDS.*

OPRA mandates that "government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded [under OPRA] as amended and supplemented, shall be construed in favor of the public's right of access." Libertarian Party of Cent. New Jersey v. Murphy, 384 N.J. Super. 136, 139 (App. Div. 2006) (citing N.J.S.A. 47:1A-1). "The purpose of OPRA 'is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.'" Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (quoting Asbury Park Press v. Ocean County Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)).

These lofty descriptions of the purposes of OPRA are not mere bromides or empty statements of legislative intent. Our Supreme Court has stated that "Those who enacted OPRA understood that knowledge is power in a democracy, and that without access to information contained in records maintained by public agencies citizens cannot monitor the operation of our government or hold public officials accountable for their actions." Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities, 207 N.J. 489, 502 (2011).

Hon. Marlene Lynch Ford, A.J.S.C.

February 23, 2016

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The Legislature sought to ensure that records would be "readily available" by imposing a strict response time requirement upon record custodians. 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). As also prescribed under 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. In order for a response to be valid, it must be in writing and must either grant access, deny access, seek clarification or request an extension of time within the statutorily mandated seven (7) business days. N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (October 2007)

Here, the Foundation submitted a request to the presumed Custodian via e-mail on December 18, 2016 and again, along with the Custodian's counsel, on January 6, 2016. The Foundation also submitted another copy of the request to Custodian by fax on January 27, 2016 and received confirmation that the fax was successfully sent and received by the District. To date, the Foundation has not received a response.

There is no doubt that the records sought by Plaintiff are "government records" within the meaning of OPRA. Under OPRA, a "government record":

means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its

official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof.  
N.J.S.A. 47:1A-1.1.

Meeting minutes, resolutions and letters to the governing body of the Fire District qualify as public records under the broad definition set forth above.

Defendant Custodian should be ordered to produce the requested records immediately and, if any of those records are redacted or suppresses, Custodian should also be ordered to file and serve a privilege log and file full, unredacted versions for an *in camera* review.

**POINT III**

*DEFENDANT CUSTODIAN SHOULD BE LIABLE FOR PLAINTIFF'S ATTORNEY'S FEES AND COSTS.*

By refusing to provide the Foundation with a response to the OPRA request, the Custodian has violated its rights under OPRA. The Foundation is being forced to litigate this matter to obtain the requested records because the Custodian failed to respond to Plaintiff's repeated requests. The Court should find that the Plaintiff is the prevailing party. "A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6.

**POINT IV**

*COMMON LAW RIGHT OF ACCESS*

Hon. Marlene Lynch Ford, A.J.S.C.

February 23, 2016

Page 6 of 6

Common law public records "include almost every document recorded, generated, or produced by public officials whether or not 'required by law to be made, maintained or kept on file.'" Shuttleworth v. City of Camden, 258 N.J. Super. 573, 582 (App. Div. 1992). Accordingly, the meeting minutes, resolutions and correspondence identified in Plaintiff's request are common law public records. Whether or not Plaintiff is entitled to any information that the Custodian might suppress from the responsive records depends on how the Court balances the Foundation's interest in disclosure against the governmental interest in confidentiality. Loigman v. Kimmelman, 102 N.J. 98, 113 (1986). The Foundation might be entitled to disclosure under the common law even if it is not entitled to disclosure under OPRA. Bergen County Imp. Authority v. North Jersey Media Group, Inc., 370 N.J. Super. 504, 509-10 (App.Div. 2004). ("We now hold that the common law definition of "public record" is broader than the statutory definition of "government record" contained in [OPRA].")

Respectfully,

Dated: February 23, 2016

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Anthony H. Ogozalek, Jr.  
Beckman Ogozalek & Londar