

NOT TO BE PUBLISHED WITHOUT  
THE APPROVAL OF THE COMMITTEE ON OPINIONS

Mat Stern,  Plaintiff,  v.  Lakewood Volunteer Fire Department, et al.,  Defendants.
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SUPERIOR COURT OF NEW JERSEY  
  
LAW DIVISION  
  
OCEAN COUNTY  
  
DOCKET NO. OCN-L-2160-14  
  
CIVIL ACTION  
  
**OPINION**

**Argued: February 5, 2015**  
**Decided: February 6, 2015**

**Vincent J. Grasso, A.J.S.C.**

Walter M. Luers appearing on behalf of the plaintiff, Mat Stern (Law Offices of Walter M. Luers, LLC)

Alexander Pavliv appearing on behalf of the defendants, Lakewood Volunteer Fire Department, et al. (Pavliv & Rihacek LLC)

**Summary**

The matter before the court comes by way of order to show cause and verified complaint filed by plaintiff Mat Stern, alleging defendants, four volunteer fire companies in Lakewood including Lakewood Volunteer Fire Department, Inc. (“Fire Companies”), violated New Jersey’s Open Public Records Act, N.J.S.A. 47:1A-1 to -13 (OPRA) by denying plaintiff’s access to copies of documents requested in May 2014. The OPRA requests are related to the Fire Companies’ communication, operation, and financial records, including emails, meeting minutes,

and check registry. At issue is whether the Fire Companies are public agencies subject to OPRA pursuant to N.J.S.A. 47:1A-1.1.

### **Background**

In May 2014, plaintiff submitted identical OPRA requests to all four fire companies. Through these requests, plaintiff sought access to copies of documents, including the rosters, minutes, and resolutions of the Fire Companies' meetings, a list of all members of the Fire Companies, certain emails, the Fire Companies' check registry, correspondences during certain period, and the bylaws and constitution of the Fire Companies. The Fire Companies responded to plaintiff by stating that they were consulting with their legal advisor as to whether they were required to comply with OPRA requests. Thereafter, plaintiff received no further response. On July 31, 2014, plaintiff initiated this action with a Verified Complaint and Order to Show Cause. Despite proper service, the Fire Companies failed to file any opposition or otherwise respond to the lawsuit. On November 5, 2014, the court ordered that all non-privileged documents be provided to plaintiff and held that plaintiff, as the prevailing party, was entitled to an award of attorneys' fees and costs.

On November 26, 2014, the Fire Companies filed a notice of motion for reconsideration and to vacate the November 5, 2014 court order ("Order") by alleging excusable neglect under R. 4:50-1 and claiming that they are not "government agencies and/or instrumentalities" subject to OPRA pursuant to N.J.S.A. 47:1A-1.1. After hearing the oral argument on January 9, 2015, the court decided to vacate the November 5, 2014 Order and reinstate plaintiff's Order to Show Cause. The court also ordered the Fire Companies to serve and file a supplemental certification in response to the certification of Larry Loigman, who claimed that the Fire Companies were funded and under the supervision and control of the Fire District. The Fire Companies then

submitted the supplemental certification of Chief Stephen McNamara regarding funding, equipment, and pension matters.

### **Findings**

According to the certifications from both parties, the following are non-disputed facts. From 1884 to 1888, the Fire Companies were founded as community mutual aid societies and later was incorporated as 501(c)(3) charitable organizations. The Lakewood Fire District was formed in 1896. The Fire District annually collects a tax from all real property within the District to support the Fire Companies' operations and capital expenditures, including \$350 per year for uniforms and workers compensation insurance to the members of the Fire Companies; pension for members staying in for twenty years; a \$200 per month for ten years for members who stay in for twenty years and reach age sixty-five; and the utility, repair, maintenance, and other costs associated with each of the Fire Companies' firehouses and the fire trucks. Moreover, the titles to each of the firehouses in the Township and all of the fire apparatus (fire engines, fire trucks, fire chiefs' cars, and similar vehicles) are vested exclusively in the Board of Fire Commissioners. The Fire Companies pay for their other on-going expenses through donations of the community and benefactors.

Moreover, the By-Laws of the Fire Companies state the following in Article I, Section 3,

#### Membership Process:

The process to be engaged in shall be *in accordance with the procedures established by the Board of Fire Commissioners* which are incorporated herein by reference. Each Fire Company shall provide to new members copies of the Lakewood Fire Department By-Laws, the respective Fire Company By-Laws and *Commissioners' Policies*.

(emphasis added).

Additionally, on June 9, 2014, the Board of Fire Commissioners unanimously adopted a resolution establishing, as a matter of policy, that all fire companies within the District are required to comply with the provisions of the Open Public Meetings Act and OPRA.

Nevertheless, the Fire Companies submit that they are not “government agencies and/or instrumentalities” subject to OPRA pursuant to N.J.S.A. 47:1A-1.1, because they were not created by the Lakewood Fire District, but formed in 1884 and 1888 before the Fire District was formed in 1896. They maintain that because their financial resources are private sources and fund raisers are confidential and proprietary, the disclosure of their financial records would lead to undue competition from other Fire and First Aide Departments for scarce charity dollars. Finally, they argue that if they are required to comply with OPRA requests, the effort and expense imposed on their personnel would cause them to cease operations and the Lakewood taxpayers would have to shoulder the burden of employing full time fire fighters.

Plaintiff contends that the Fire Companies are public agencies subject to OPRA, because they owed their existence to the Fire District’s authorization pursuant to N.J.S.A. 40A:14-70.1(a) and the Fire District exercises substantial control over the Fire Companies’ operations and supports the Fire Companies’ operations through the tax that the Fire District collects.

N.J.S.A. 47:1A-1.1 provides the definition of “public agency” as follows:

“Public agency” or “agency” means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other *instrumentality within or created by a political subdivision of the State* or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

[N.J.S.A. 47:1A-1.1 (emphasis added).]

“N.J.S.A. 47:1A-1.1 is broadly written so that a wide variety of entities fall within the compass of that term.” Fair Share Hous. Ctr., Inc. v. N.J. State League of Municipalities, 207 N.J. 489, 492 (2011). A “public agency” includes an “instrumentality *within* a political subdivision of the State.” N.J.S.A. 47:1A-1.1.

The Fire District is acting as the municipality relating to firefighting according to N.J.S.A. 40A:14-81, which states as follows:

The commissioners of a fire district shall have the powers, duties and functions within said district to the same extent as in the case of municipalities, relating to the prevention and extinguishment of fires and the regulation of fire hazards.

Pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 40A:14-81, the central issue in this case turns on whether the Fire Companies are “instrumentalit[ies] *within*” the Fire District. Therefore, this case distinguishes from the Fair Share Housing case, because in Fair Share Housing the applicable words in N.J.S.A. 47:1A-1.1 for the League is “instrumentality or agency *created* by a combination of political subdivisions.” Fair Share Hous., *supra*, 207 N.J. at 503. However, the court’s analysis does not end simply because the Fire Companies came into existence before the creation of Lakewood’s Fire District.

Although OPRA does not define “instrumentality” under N.J.S.A. 47:1A-1.1, the New Jersey Supreme Court in Fair Share Housing gave the word its “generally accepted meaning” defined as “[a] thing used to achieve an end or purpose” and, alternatively, as “[a] means or agency through which a function of another entity is accomplished, such as a branch of a governing body.” Fair Share Hous., *supra*, 207 N.J. at 503 (quoting *Black's Law Dictionary* 814 (8th ed. 2004)). Here, the Fire Companies are achieving an end and providing the function for the Lakewood Township, namely firefighting, and, therefore, constitute “instrumentalities.”

Moreover, in Paff v. New Jersey State Firemen's Ass'n, the New Jersey Appellate Division held that in order to determine whether an entity is a "public agency" under OPRA, "a court must look behind the technical form of an entity to consider its substantive attributes." Paff v. N.J. State Firemen's Ass'n, 431 N.J. Super. 278, 288 (App. Div. 2013). Specifically, the court considered whether the Firemen's Association performs a government function; whether it was created by a subdivision of the State; whether it is controlled by a subdivision of the State; and whether disclosure would advance the purpose of OPRA. Paff, supra, 431 N.J. Super. at 289–92. The court held that "[m]embers of volunteer fire companies serve 'under the supervision and control of [a] municipality and in performing fire duty shall be deemed to be exercising a governmental function.'" Paff, supra, 431 N.J. Super. at 292. The court found that "[t]he Association's financial activities implicate OPRA's aim to shed light on the fiscal affairs of government, and to combat waste, misconduct and corruption," because "[t]he Association is the direct recipient of substantial revenues generated from specific taxes imposed on insurance premiums." Paff, supra, 431 N.J. Super. at 290.

In light of the facts presented here and the well-established case law, the court finds that the Fire Companies are public agencies subject to OPRA requirements pursuant to N.J.S.A. 47:1A-1.1. Like the Fair Share Housing case, the resolution of the issue at hand turns on the meaning of "public agency." Here, the Fire Companies are performing a governmental function, which is firefighting. Moreover, the Fire District exercises control over the Fire Companies' operations and funds. The Fire District uses tax revenue to pay \$350 per year for uniforms and workers compensation insurance to the members of the Fire Companies; pension for members staying in for twenty years; and a \$200 per month for ten years for members who stay in for twenty years and reach age sixty-five. Tax revenues are applied to the utility, repair,

maintenance, and other costs associated with each of the Fire Companies' firehouses and the fire trucks. The titles to each of the firehouses in the Township and all of the fire apparatus (fire engines, fire trucks, fire chiefs' cars, and similar vehicles) are vested exclusively in the Board of Fire Commissioners. Moreover, the By-Laws of the Fire Companies indicate that the membership process should comply with the procedures established by the Board of Fire Commissioners. Furthermore, the Board of Fire Commissioners established a policy that all fire companies within the District are required to comply with the provisions of the Open Public Meetings Act and OPRA. Additionally, the Fire Companies' counsel, at oral argument on February 5, 2015, conceded that the Fire Companies are presently controlled by the procedures of the Lakewood Fire District's Board of Fire Commissioners.

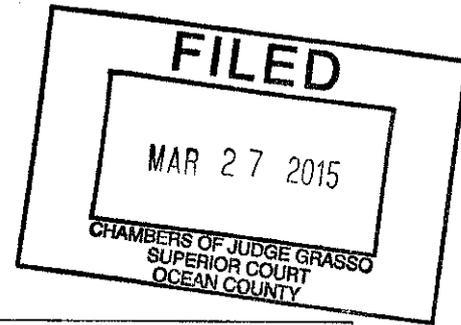
Although the Fire Companies were created in the late nineteenth century prior to the creation of the Fire District, the creation test alone is not dispositive here, particularly in light of the Legislative goals of OPRA, "to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process." Mason v. City of Hoboken, 196 N.J. 51, 64 (2008); Paff, supra, 431 N.J. Super. at 290. The Fire Companies cite the Government Records Council's (GRC) case of Carrow v. Borough of Newfield, Complaint No. 2012-111. The Carrow case, however, is a GRC's case, which is not binding on this court. Moreover, Carrow is distinguishable because the fire company in Carrow existed in a municipality that did not have a fire district.

Finally, disclosure of the Fire Companies' communication, operation, and financial records requested by plaintiff will shed light on the Fire Companies' operations and expenditures to combat waste, misconduct, and corruption, which advances the purpose of OPRA, "to maximize public knowledge about public affairs in order to ensure an informed citizenry and to

minimize the evils inherent in a secluded process.” Mason v. City of Hoboken, 196 N.J. 51, 64 (2008); Paff, supra, 431 N.J. Super. at 290. The Fire Companies’ argument about avoiding undue competition for charity dollars are unpersuasive and irrelevant to the purpose of OPRA. The Fire Companies also failed to prove that the effort and expenses imposed on them to comply with OPRA requests would cause them to cease operations. Additionally, this case is distinguishable from Fran Brooks v. Tabernacle Rescue Squad, Inc., BUR-L-2629-13 (Feb. 26, 2014).

In summary, considering all these respects, the court finds that the Fire Companies are instrumentalities within the Fire District and, therefore, are public agencies subject to OPRA pursuant to N.J.S.A. 47:1A-1.1. The Fire Companies violated OPRA by denial of access to their non-privileged government records requested by plaintiff. Counsel are to confer on the issue of counsel fees and advise the court. Mr. Luers is to prepare the order, which will require compliance by the Fire Companies with the requested records within 10 days of their receipt of the court’s signed order.

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Telephone: 908.894.5656  
Attorney for Plaintiff



<p>MAT STERN,  Plaintiff,  v.  LAKEWOOD VOLUNTEER FIRE DEPARTMENT, INC., a New Jersey non- profit corporation, <i>et al.</i>,  Defendants.</p>	<p><b>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: OCEAN COUNTY</b></p> <p><b>DOCKET NO. OCN-L-002160-14</b></p> <p><b>CIVIL ACTION</b></p> <p><b>ORDER</b></p>
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**THIS MATTER** having been brought before the Court pursuant to *R. 4:67-2(a)* by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC, counsel for Mat Stern, by Verified Complaint and Order to Show Cause for an Order requiring Defendants Lakewood Volunteer Fire Department, Inc., Lakewood Fire Co. No. 1, Junior Hose 3 A NJ Nonprofit Corporation and Reliance Hose Co. No. 4 of Lakewood, Inc. with copies of certain public records, and said application having been opposed by Defendants, represented by Pavliv & Rihacek LLC (Alexander Pavliv, Esq. appearing), and the Court having considered the papers submitted by the parties, and having heard oral argument on February 5, 2015; and for the reasons set forth in the February 6, 2015 written opinion of the Court, and for good cause shown,

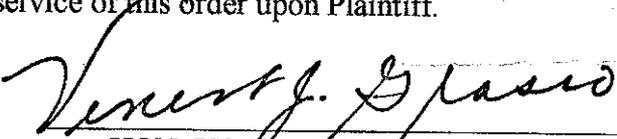
IT IS on this 27<sup>th</sup> day of February, 2015

A. **ORDERED** that within 10 days after service of this Order upon them, each respective Defendant shall, to the extent these documents are within their

custody, possession or control, provide to Plaintiff copies of (1) the minutes and recordings from fire company meetings and copies of resolutions passed for the time period of January 1, 2013 through May 19, 2014; (2) a list of all members of the Fire Company; (3) all emails to, from and between the President, Vice President, Treasurer and Secretary from January 1, 2013 through May 19, 2014; (4) emails to, from and between the President, Vice President, Treasurer Secretary and members of the Board of Fire Commissioners; (5) emails to and from the Fire Chief for the time period of January 1, 2013 through May 19, 2014; (6) a roster of who attended Fire Company meetings for January 1, 2013 through May 19, 2014; (7) a copy of the Fire Company's check registry for January 1, 2013 through May 19, 2014; and (8) a copy of all correspondence for the date range of January 1, 2013 through May 19, 2014 and, with respect to Rescue Co. No. 2, Engine Co. No. 1 and Jr. Hose No. 3, their bylaws and constitution; and it is further

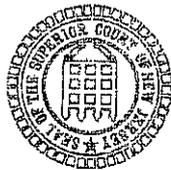
B. **ORDERED** that Plaintiff is the prevailing party in this matter and that counsel for the parties shall confer regarding the issue of counsel fees and advise the Court on the status of their negotiations within \_\_ days of the date hereof; and it is further

C. **ORDERED** that Plaintiff shall serve a copy of this Order upon Defendants within seven days of service of this order upon Plaintiff.

  
HON. VINCENT J. GRASSO, A.J.S.C.

This order was:  
OPPOSED XX  
UNOPPOSED \_\_\_\_\_

# Superior Court of New Jersey



CHAMBERS OF  
JUDGE VINCENT J. GRASSO  
ASSIGNMENT JUDGE

OCEAN COUNTY COURT HOUSE  
P.O. BOX 2191  
TOMS RIVER, NJ 08754-2191

(732)-929-2176

April 24, 2015

Walter M. Luers, Esq  
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23 West Main Street  
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John Thaddeus Rihacek, Esq.  
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Howell, New Jersey 07731

Re: Stern v. Lakewood Volunteer Fire Department, Inc., et al.  
Docket No.: OCN-L-2160-14

Dear Counsel:

## Summary

This matter comes by way of plaintiff Mat Stern's motion for attorney's fees and expenses following this court's previous written opinion dated February 6, 2015. Plaintiff's action asserted a violation of the Open Public Records Act (OPRA), N.J.S.A. 47:1-1 to -13 by defendants, Lakewood Volunteer Fire Department, Inc., et al. (Fire Companies). In the previous opinion, the court held that the Fire Companies are instrumentalities within the Fire District and, therefore, are public agencies subject to OPRA pursuant to N.J.S.A. 47:1A-1.1. As a result, the court found that the Fire Companies violated OPRA by denial of access to their non-privileged government records requested by plaintiff and required that counsel confer on the issue of counsel fees and advise the court. Plaintiff seeks attorney's fees and costs totaling \$25,002.98. Herein, the court considers the reasonable attorney's fees that Walter M. Luers, Esq., counsel for

Stern, is entitled pursuant to the court's previous opinion. Counsel waived oral argument and submitted the matter on the papers.

### **Background**

As the court gave a detailed factual background in its earlier opinion, the court does not do so at length in this opinion. Instead, the court will provide a brief summary of the relevant facts and procedures.

The matter was brought before the court by way of order to show cause and verified complaint filed by plaintiff, Mat Stern, alleging defendants, four volunteer fire companies in Lakewood including Lakewood Volunteer Fire Department, Inc. (Fire Companies), violated New Jersey's Open Public Records Act, N.J.S.A. 47:1A-1 to -13 (OPRA) by denying plaintiff's access to copies of documents requested in May 2014. The OPRA requests are related to the Fire Companies' communication, operation, and financial records, including emails, meeting minutes, and check registry.

In May 2014, plaintiff submitted identical OPRA requests to all four fire companies. Through these requests, plaintiff sought access to copies of documents, including the rosters, minutes, and resolutions of the Fire Companies' meetings, a list of all members of the Fire Companies, certain emails, the Fire Companies' check registry, correspondences during certain period, and the bylaws and constitution of the Fire Companies. The Fire Companies responded to plaintiff by stating that they were consulting with their legal advisor as to whether they were required to comply with OPRA requests. Thereafter, plaintiff received no further response. On July 31, 2014, plaintiff initiated this action with a verified complaint and order to show cause. Despite proper service, the Fire Companies failed to file any opposition or otherwise respond to the lawsuit. On November 5, 2014, the court ordered that all non-privileged documents be

provided to plaintiff and held that plaintiff, as the prevailing party, was entitled to an award of attorney's fees and costs.

On November 26, 2014, the Fire Companies filed a notice of motion for reconsideration and to vacate the November 5, 2014 court order by claiming excusable neglect under R. 4:50-1 and that they are not "government agencies and/or instrumentalities" subject to OPRA pursuant to N.J.S.A. 47:1A-1.1. After hearing the oral argument on January 9, 2015, the court decided to vacate the November 5, 2014 order and reinstate plaintiff's order to show cause. The court also directed the Fire Companies to serve and file a supplemental certification in response to the certification of Larry Loigman, who claimed that the Fire Companies were funded and under the supervision and control of the Fire District. The Fire Companies then submitted the supplemental certification of Chief Stephen McNamara regarding funding, equipment, and pension matters.

In a nutshell, the legal issue for the court was whether the Fire Companies were government agencies or instrumentalities subject to OPRA pursuant to N.J.S.A. 47:1A-1.1. The Fire Companies maintained they were not created by the Lakewood Fire District as they were formed before the Fire District was founded in 1896. Plaintiff argued that the Fire Companies are public agencies subject to OPRA, because they owe their existence to the Fire District's authorization pursuant to N.J.S.A. 40A:14-70.1(a) and that the Fire District exercised substantial control over the Fire Companies operations and supports the Fire Companies through a tax that the Fire District collects. Following briefing and oral argument on the legal issue, the trial court determined that the fire companies are public agencies subject to OPRA requirements. The trial court also found that their denial of the requested non-privileged documents violated OPRA. This application for counsel fees followed.

### **Findings**

New Jersey courts generally follow the “American Rule,” under which each party pays their own legal fees. Mason v. City of Hoboken, 196 N.J. 51, 70 (2008) (citing Rendine v. Pantzer, 141 N.J. 292, 322 (1995)); see R. 4:42-9; see also Litton Industries v. IMO Industries, 200 N.J. 372, 385 (2009). Nevertheless, “a prevailing party can recover those fees if they are expressly provided for by statute, court rule, or contract.” Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 440 (2001). The OPRA provides an attorney fee-shifting provision, N.J.S.A. 47:1A-6, which provides that “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney’s fee.” In New Jerseyans for a Death Penalty Moratorium v. New Jersey Department of Corrections (NJDPM), the New Jersey Supreme Court explained:

Under the OPRA, it is the declared public policy of this State that “government records shall be readily accessible for inspection, copying, or examination by the citizens of this State.” N.J.S.A. 47:1A-1. To obtain records that are not made available, “[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. If the court determines that the custodian unjustifiably denied access to the record in question, he or she is entitled to a “reasonable attorney’s fee.” Ibid.

[185 N.J. 137, 153 (2005).]

As such, “[OPRA] mandate[s], rather than permit[s], an award of attorney’s fees to a prevailing party.” Mason, supra, 196 N.J. at 75.

The Court in Rendine v. Pantzer articulated the process a court should employ to determine the appropriate fee under a fee-shifting statute: “the first step in the fee-setting process is to determine the ‘lodestar’: the number of hours reasonably expended multiplied by a reasonable hourly rate.” Rendine, supra, 141 N.J. at 334–35. The award of counsel fees is a “fact-sensitive inquiry on a case-by-case basis, evaluating the reasonableness of, and motivations for, an agency’s decisions, and viewing each matter on its merits.” Mason, supra, 196 N.J. at 79.

A court “should not accept passively the submissions of counsel to support the lodestar amount,” instead the court should modify the proposed fee if the court finds that the amount is excessive under the circumstances. Rendine, supra, 141 N.J. at 335–36 (citations omitted). To assess the number of hours reasonably expended, the court should exclude hours that are “excessive, redundant, or otherwise unnecessary.” Rendine, supra, 141 N.J. at 335 (citations omitted). As to the assigned hourly rates, “[t]hat determination need not be unnecessarily complex or protracted, but the trial court should satisfy itself that the assigned hourly rates are fair, realistic, and accurate, or should make appropriate adjustments.” Rendine, supra, 141 N.J. at 337. “Generally, a reasonable hourly rate is to be calculated according to the prevailing market rates in the relevant community.” Ibid. “To take into account delay in payment, the hourly rate at which compensation is to be awarded should be based on current rates rather than those in effect when the services were performed.” Ibid. The assigned hourly rates for the participating attorneys should be reasonable and comparable to the hourly rate of those attorneys in the community of “comparable skill, experience, and reputation.” Ibid. (quoting Rodé v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990)).

In assessing the reasonableness of an award, the New Jersey Supreme Court has instructed New Jersey courts to consider the factors articulated in RPC 1.5(a):

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) whether the fee is fixed or contingent.

[Litton, supra, 200 N.J. at 386–87 (quoting RPC 1.5(a)).]

“The product of reasonable hours times a reasonable rate does not end the inquiry. There remain other considerations that may lead the district court to adjust the fee upward or downward.” Hensley v. Eckerhart, 461 U.S. 424 (1983). “When a prevailing party has faced a substantial risk of nonpayment in its attempt to secure the release of a government record, enhancement may be appropriate.” NJDPM, supra, 185 N.J. at 157. “Because enhancements are not preordained, trial courts should not enhance fee awards as a matter of course. Every case will depend upon its facts. Ordinarily, the facts of an OPRA case will not warrant enhancement of the lodestar because the economic risk in securing access to a particular government record will be minimal . . . . [U]nusual circumstances occasionally may justify an upward adjustment of the lodestar.” Ibid. A reviewing court should consider “the public importance of the matter, the degree of success, the high risk of nonpayment and any other factors that support the request for enhancement.” NJDPM, supra, 185 N.J. at 143. “The enhancement ‘ordinarily should range between five and fifty-percent of the lodestar fee, with the enhancement in typical contingency cases ranging between twenty and thirty-five percent of the lodestar.’” NJDPM, supra, 185 N.J. at 158.

The court is satisfied and finds that plaintiff emerged as the prevailing party in this OPRA litigation as there was a basis in law for the records permitted for disclosure under OPRA as well as a causal nexus between the request for the non-privileged documents and the court’s decision that same be produced to the requester. The court’s task in the fee-setting process is first to determine the lodestar, which requires a determination of the hours reasonably expended multiplied by a reasonable hourly rate. In that regard, the court has had an opportunity to review the submissions by plaintiff’s counsel as well as the opposition submitted on behalf of the

defendant Fire Companies. At the outset, the court finds that the hourly rate of plaintiff's counsel, Walter M. Luers, of \$315.00 per hour is reasonable. Defendants' counsel does not strenuously object to the hourly rate but rather takes issue with the total amount of counsel fees sought, which are characterized as excessive and amounting to punitive damages against a volunteer non-profit organization with limited resources. Having determined that the \$315.00 per hour rate is reasonable and commensurate with the scale, experience, and competency of plaintiff's counsel, particularly in OPRA matters, the next task is the assessment of the number of hours reasonably expended in this litigation.

In its assessment of the time and labor required to litigate this case, the legal issue presented does not strike this court as particularly novel or complex. There is adequate case involving volunteer fire companies, which provided guidance to the court, e.g. a recent Appellate Division decision in Paff v. N.J. State Firemen's Ass'n, 431 N.J. Super. 278 (App. Div. 2013). The nature and extent of the operations by these Fire Companies did not require any significant research by plaintiff's counsel as the certifications submitted in this case clearly outlined the facts necessary for the court to render its opinion. However, the hours expended by plaintiff's counsel initially when no filing response from the Fire Companies was forthcoming warrant reasonable compensation.

Despite the court's finding, the court is mindful, as urged by defendants' counsel, that the Fire Companies rely upon fundraisers to supply their financial needs exclusive of the Fire District's loan of equipment and municipal buildings. These volunteer fire companies have no full time clerical personnel on staff and probably little experience in dealing with demands for public records under OPRA. A certification from defendants' fire chief indicates the finances are based essentially upon donations and mail solicitations that bring in gross receipts of

\$28,000.00 per year with a cost of \$10,000.00 for mailing and postage leaving a net profit of \$18,000.00. The public service and taxpayer savings realized by the service of the Fire Companies are a factor that the court believes it may properly consider under the circumstances at hand. Moreover, it is the court's view that an enhancement of the lodestar is not warranted in this case under these facts and given the legal issues presented.

In sum, the court finds that a reasonable attorney's fee is due to plaintiff's counsel in the amount of \$6,300.00 presenting roughly twenty hours of work by Mr. Luers with costs of \$230.00 for filing fees and \$50.00 for miscellaneous costs. Mr. Luers is to prepare an order that comports with the court's ruling and submit same to the court. With the court's decision on counsel fees and costs, the matter has reached a final judgment.

Very truly yours,

  
VINCENT J. GRASSO, A.J.S.C.

VJG/mag