

BPREPARED BY THE COURT

REPUBLICAN NATIONAL
COMMITTEE, INC.,

Plaintiff,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF STATE,
DIVISION OF ELECTIONS,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
DOCKET NO. L-1499-25

CIVIL ACTION

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

THIS MATTER having come before the Court, the Hon. Robert Lougy, A.J.S.C., presiding, on the Order to Show Cause of Plaintiff Republican National Committee, Inc. (“RNC”), represented by Jason N. Sena, Esq.; and Defendant State of New Jersey, Department of State, Division of Elections (“Division of Elections”), represented by Deputy Attorney General Zachary Aboff, having filed a motion to dismiss; and Plaintiff having filed a reply; and the Court having considered the parties’ pleadings and arguments; and for the reasons as stated below; and for good cause shown;

IT IS on this 19th day of February 2026 **ORDERED** that:

1. Defendant's application for an order dismissing Plaintiff's motion to dismiss is **GRANTED**. Plaintiff's Verified Complaint is **DISMISSED with prejudice**.
2. This Order shall be deemed filed and served upon uploading on eCourts.

/s/ Robert Lougy
ROBERT LOUGY, A.J.S.C.

PURSUANT TO RULE 1:7-4(a), THE COURT PROVIDES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This matter comes before the Court on Plaintiff's Order to Show Cause and Defendant's motion to dismiss Plaintiff's Verified Complaint. For the following reasons, the Court denies Plaintiff's application and grants Defendant's motion to dismiss.

The Court provides the following factual and procedural histories. Plaintiff requested on March 25, 2025 that Defendant provide certain documents relating to its compliance with the National Voter Registration Act (the "Voter List Maintenance Request"). Compl. at ¶ 5. On June 3, 2025, Plaintiff again requested a response to the Voter List Maintenance Request. *Id.* at ¶ 6. On July 3, 2025, Plaintiff made another request that Defendant provide copies of Seal Audit Logs for voting machines in the State of New Jersey (the "Seal Audit Log Request"). *Id.*

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at ¶ 9. These Seal Audit Logs are described as listing “the number assigned to the plastic seal attached to each voting machine at the storage location, confirmation that the same seal is affixed to the voting machine at poll opening and the number of the new seal affixed to the voting machine at poll closing, along with the signature of the poll workers who broke the seals.” Id. at ¶ 10.

On July 11, 2025, Defendant produced documents partially responsive to the Voter List Maintenance Request. Id. at ¶ 15. On July 15, Defendant denied Plaintiff’s Seal Audit Logs Request. Id. at ¶ 17.

The denial of the Seal Audit Logs Request stated:

As per your OPRA request; please be advised that seal audit logs are primarily maintained at the county level. To the extent they are maintained by this office, they are exempt from disclosure under OPRA, N.J.S.A. 47:1A-1.1, because they contain:

- 1) “administrative or technical information regarding computer hardware, tablets, telephones, electronic computing devices, software applications, and networks or devices which operate on or as a part of a computer network or related technologies within the same, which shall include system logs, event logs, transaction logs, tracing logs, or any logs which are reasonably construed to be similar to the same and generated by the devices or servers covered within this paragraph, which, if disclosed, could jeopardize computer security, or related technologies,” and
- 2) “security measures and surveillance techniques which, if disclosed, would create a risk to the

safety of persons, property, electronic data or software.”

Your request is hereby denied.

[Sena Cert. Ex. E.]

On July 17, 2025, Plaintiff filed this action, alleging that Defendant violated the Open Public Records Act, N.J.S.A. 47:1A-1 to -13 (“OPRA”), and the common law right of access in failing to provide documents responsive to both requests. Id. at ¶ 1.

In July 2025, in response to a letter from Defendant, this Court dismissed Plaintiff’s complaint without prejudice under the safe-harbor provision of N.J.S.A. 47:1A-6. See Trans ID LCV20252139148. Plaintiff moved to reconsider this dismissal, which the Court granted in December 2025 with respect to the Seal Audit Log Request only, reinstating that portion of Plaintiff’s complaint. Ord. Partially Granting Mot. to Reconsider, December 11, 2025. On January 30, 2026, Defendant filed the present motion to dismiss Plaintiff’s Complaint.

Plaintiff argues the following arguments with respect to the Seal Audit Log Request in support of its initial Order to Show Cause. First, it argues that Defendant violated OPRA by not producing the Seal Audit Logs in the timeframe set by the statute. Pb4. It argues that the logs constitute government records under OPRA. Id. at 5. It contends that Defendant’s denial of the Seal Audit Log Request improperly denied the request on the basis that Defendant does not “primarily

maintain[.]” the records. Id. at 5-6. Plaintiff states that if Defendant did not possess the Seal Audit Logs, it could have denied the request on that ground. Id. at 6. It argues that Defendant’s “cursory denial” of the request violated OPRA. Id. at 7.

Second, Plaintiff argues that if the Court determines that Defendant violated OPRA, it should award Plaintiff a “reasonable attorney’s fee” under OPRA. Id. at 8.

Finally, Defendant argues that the Seal Audit Logs should also be produced under the common law right of access. Ibid. It contends that its interest in inspecting the Seal Audit Logs outweighs Defendant’s interest in withholding them. Ibid.

For the above reasons, Plaintiff requests the Court enter judgment in its favor and award attorney’s fees. Id. at 15.

Defendant makes the following arguments in support of its motion to dismiss. First, it argues that the Complaint should be dismissed because Defendant does not make or maintain the requested records. Db9. Instead, it states that the Seal Audit Logs are maintained by county-level officials. Id. at 10. Defendant therefore maintains that it has no duty to produce them under OPRA. Ibid.

Second, Defendant argues that the Seal Audit Logs are exempt from disclosure. Id. at 11. Specifically, it argues that a statutory exemption for certain

kinds of logs, which, if disclosed, could jeopardize security, applies to the Seal Audit Logs. Id. at 11-12 (citing N.J.S.A. 47:1A-1.1). Additionally, it argues that the Seal Audit Logs fall under the exemption for “security measures . . . which, if disclosed, would create a risk to the safety of persons, property, electronic data or software.” Id. at 15 (citing N.J.S.A. 47:1A-1.1).

Third, Defendant argues that Plaintiff is not entitled to the records under the common law right of access. Id. at 17. It argues that the balancing test required by the common law considers statutory exemptions under OPRA. Id. at 18-19. It argues that the two statutory exemptions identified above give it a strong interest in nondisclosure. Ibid. It also argues that Plaintiff’s purported interest in the requested records is “unsubstantiated” and does not outweigh this interest in nondisclosure. Id. at 19.

Finally, Defendant argues that Plaintiff is not entitled to counsel fees under OPRA. Id. at 19-20. It notes that the award of counsel fees is now discretionary under OPRA, per the 2024 amendment. Ibid. Furthermore, it argues that the RNC is not a prevailing party in this matter. Ibid.

For the above reasons, Defendant asks that Plaintiff’s complaint be dismissed with prejudice and its Order to Show Cause be denied. Id. at 20.

Plaintiff makes the following arguments in reply. Plaintiff argues that Defendant violated OPRA and should be ordered to pay attorney fees. Pl’s Reply

Br. at 3. It identifies the following as alleged violations of OPRA. First, that Defendant misrepresented that it possessed the Seal Audit Logs in its denial. Id. at 3. Second, that Defendant failed to adequately articulate why the Seal Audit Logs were exempt from disclosure in its denial. Id. at 5-6. Third, that Defendant failed to adequately search for responsive records prior to issuing its denial. Id. at 6-7. Plaintiff argues that because of these OPRA violations, the Court has the authority to award attorney's fees in this matter regardless of whether Plaintiff qualifies as a prevailing party. Id. at 7-8.

Next, Plaintiff argues that the Court should decide the substance of this case even if Defendant does not possess the requested records. Id. at 8. It argues that even if the Complaint is moot, the Court may decide a case where the underlying issue is both of public interest and capable of repetition yet avoiding review. Ibid. It argues that, because in the future Defendant will likely argue that it does not possess Seal Audit Logs, Defendant cannot weigh in on substance of this Complaint in future litigation and the issues should be addressed now. Id. at 9.

On the substance of the matter, Plaintiff argues that neither of the exemptions identified by Defendant apply to the Seal Audit Logs. It argues that the "computer security" exemption does not apply because the logs do not contain information related to the technical operation of voting machines. Id. at 9-10. It argues that the "security measures" exemption does not apply because the Seal

Audit Logs at issue related to a prior election and are no longer attached to voting machines today. Id. at 12. It also notes that officials in at least one other jurisdiction routinely provide similar logs to political parties. Ibid. Plaintiff also argues that even if these exemptions applied, the records would need to be released in redacted form rather than withheld entirely. Id. at 13.

Plaintiff also contends that the common law right of access compels the release of the Seal Audit Logs. Id. at 13-14. Plaintiff argues that its interest in the logs outweighs any security interest the State has in withholding them. Ibid.

For the above reasons, Plaintiff requests that the Court enter judgment in its favor and that it be awarded attorney's fees and costs. Id. at 15.

The Court now turns to the relevant, well-settled law governing access to public records. N.J.S.A. 47:1A-1 provides that "government records shall be readily accessible for inspection, copying, or examination . . . with certain exceptions, for the protection of the public interest"

"The custodian must 'promptly comply with a request' and, if 'unable to comply . . . shall indicate the specific basis therefor on the request form and promptly return it to the requestor.'" North Jersey Media Group v. Bergen County Prosecutor's Office, 447 N.J. Super. 182, 195 (App. Div. 2016). "A public agency that denies access bears 'the burden of proving that the denial of access is authorized by law.'" Ibid.; N.J.S.A. 47:1A-6. An agency has no obligation under

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OPRA to provide a requestor with a copy of a record that does not exist, or an obligation to create such a new record from information in its possession. See N.J.S.A. 47:1A-6; Burnett v. County of Gloucester, 415 N.J. Super. 506, 516 (App. Div. 2010).

OPRA sets forth the procedures for requestors to challenge a record request denial by an OPRA custodian. N.J.S.A. 47:1A-6. However, not providing records does not constitute a denial under OPRA where the requested records do not exist or are not in the custodian's possession. See Bent v. Twp. of Stafford Police Dept., 381 N.J. Super. 30, 38 (App. Div. 2005). If the records are in the possession of another public agency, the custodian is instead to direct a requestor to the public agency that, to the best of the custodian's knowledge, maintains the records. N.J.S.A. 47:1A-5(i)(1).

Here, Defendant certifies that it does not maintain the requested records. See Aboff Cert. Ex. F ¶ 8; Aboff Cert. Ex. D ¶¶ 14-15. Plaintiff does not dispute this in its reply. Plaintiff and Defendant now only dispute the hypothetical issue of whether the Seal Audit Logs would be exempt under OPRA and the common law if Defendant in fact possessed them. New Jersey courts avoid issuing advisory decisions. N.J. Coal. of Auto. Retailers, Inc. v. Ford Motor Co., 261 N.J. 348, 358 (2025), N.J. Tpk. Auth. v. Parsons, 3 N.J. 235, 240 (1949). Therefore, Plaintiff's claim for relief is moot. See Redd v. Bowman, 223 N.J. 87, 104 (2015) (“An

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issue is ‘moot when our decision sought in a matter, when rendered, can have no practical effect on the existing controversy.’”) (quoting Deutsche Bank Nat’l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 221-22 (App. Div. 2011)).

“Controversies which have become moot or academic prior to judicial resolution ordinarily will be dismissed.” Cinque v. N.J. Dep’t of Corr., 261 N.J. Super. 242, 243 (App. Div. 1993).

Plaintiff asks the Court to decide on the merits of the stated exemptions anyways, arguing that an exception to mootness applies. Specifically, it argues that “the underlying legal issue is one of substantial importance, like to reoccur but capable of evading review.” Pb8 (citing Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 311 (App. Div. 2010)). It argues that “it is unlikely that the Division will ever again weigh in on the legal issue before the Court since it will likely deny possession of such records if they are requested in the future.” Ibid.

However, the issue of whether Seal Audit Logs are exempt from disclosure under OPRA can be litigated with the proper defendant if requests are made to the counties that maintain them. If any litigation follows from such requests, Defendant may participate, consistent with the Rules of Court, as it deems suitable if it wishes to weigh in on the issue. As such, the Court finds that this matter does not fall within the narrow exception to the general rule that a Court will not decide moot cases. The Court therefore does not address the issue of whether the

exemptions raised by Defendant apply to the Seal Audit Logs, and the Complaint is dismissed as moot.

The Court next addresses the issue of counsel fees. OPRA provides that “[a] requestor who prevails in any proceeding may be entitled to a reasonable attorney’s fee.” N.J.S.A. 47:1A-6. While historically this award was mandatory for a prevailing party, it is now discretionary except where “the public agency has been determined to have unreasonably denied access, acted in bad faith, or knowingly and willfully violated [OPRA].” Ibid.

Under OPRA, “[i]n determining the propriety of an award of attorney fees, the court must first determine whether one qualifies as a ‘prevailing party.’” Spectraserv, Inc. v. Middlesex Cnty. Util. Auth. 416 N.J. Super. 565, 583 (App. Div. 2010) (quoting N. Jersey Media Group Inc. v. State, Dep’t of Personnel, 389 N.J. Super. 527, 540 (Law Div. 2006)). “A plaintiff is considered a prevailing party ‘when the actual relief on the merits of [the] claim materially alters the relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.’” Underwood Properties, LLC v. City of Hackensack, 470 N.J. Super 202, 215 (App. Div. 2022) (quoting Teeters v. Div. of Youth and Fam. Servs., 387 N.J. Super. 423, 432, 904 A.2d 747 (App. Div. 2006) (alteration in original)). A plaintiff may be a prevailing party even without an entry of judgment or an enforceable consent decree, provided that it establishes

“(1) ‘a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved’; and (2) ‘that the relief ultimately secured by plaintiffs had a basis in law.’” Mason v. City of Hoboken, 196 N.J. 51, 76 (2008) (quoting Singer v. State, 95 N.J. 487, 494 (1984), cert. denied, New Jersey v. Singer, 469 U.S. 832 (1984)).

Here, Plaintiff is not a prevailing party because it obtained no relief from this lawsuit. Because it did not prevail, it is not entitled to counsel fees. However, Plaintiff argues that Defendant nonetheless should be ordered to provide counsel fees because it violated OPRA. The relevant provision explains:

A requestor who prevails in any proceeding may be entitled to a reasonable attorney’s fee. While the court or Government Records Council may award a reasonable attorney’s fee to a prevailing party in any proceeding, if the public agency has been determined to have unreasonably denied access, acted in bad faith, or knowingly and willfully violated P.L.1963, c. 73 (C.47:1A-1 et seq.), then the court or Government Records Council shall award a reasonable attorney’s fee.

[N.J.S.A. 47:1A-6.]

The Court reads this provision less broadly than Plaintiff’s argument.

The plain language of the provision requires that the party prevail in the proceeding before the Court consider a counsel fee award, and Plaintiff fails to cross that threshold. It is well-settled that “[t]he overriding goal of all statutory interpretation ‘is to determine as best we can the intent of the Legislature, and to give effect to that intent.’” State v. S.B., 230 N.J. 62, 67 (2017) (quoting State v.

Robinson, 217 N.J. 594, 604 (2014)). As a result, “[t]o determine the Legislature’s intent, we look to the statute’s language and give those terms their plain and ordinary meaning because ‘the best indicator of that intent is the plain language chosen by the Legislature.’” State v. J.V., 242 N.J. 432, 442-43 (2020) (first citing DiProspero v. Penn, 183 N.J. 477, 492 (2005); and then quoting Johnson v. Roselle EZ Quick, LLC, 226 N.J. 370, 386 (2016)). Accordingly, “[i]f, based on a plain and ordinary reading of the statute, the statutory terms are clear and unambiguous, then the interpretative process ends, and we ‘apply the law as written.’” Id. at 443 (quoting Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012)).

The OPRA fee shifting provision establishes two different standards for counsel fee awards, one discretionary and one mandatory, with the common requirement that the award be to a prevailing party. That is the clear import of the first sentence: “A requestor who prevails in any proceeding may be entitled to a reasonable attorney’s fee.” N.J.S.A. 47:1A-6. The provision affords the trial court or GRC discretion to award counsel fees to a prevailing party in every instance, with no showing of bad faith or unreasonable conduct by the agency. The provision requires the trial court or GRC to award counsel fees to the prevailing party if the court finds the agency to have acted in bad faith, unreasonably, or in knowing and willful violation of OPRA. Nothing in the provision supports the

construction advanced by Plaintiff that a losing party is mandatorily entitled to counsel fees if it establishes bad faith conduct by the public agency.

The amended statute Plaintiff raises three arguments that Defendant violated OPRA. See Pl's Reply Br. at 3-7. Additionally, the Court determines that Defendant did not knowingly or willfully violate OPRA or act in bad faith.

First, Plaintiff argues that the denial's statement that "to the extent [the Seal Audit Logs] are maintained by this office, they are exempt from disclosure" functions as a misrepresentation that Defendant maintained the records. However, it is merely a statement that, even if the Defendant did maintain the records, it would not be required to produce them. The denial functionally states that Defendant did not possess most or all of the requested records, but that even if it possessed any, they would be exempt. This does not constitute a knowing or willful violation of the requirement to "indicate the specific basis therefore on the request form and promptly return it to the requestor." N.J.S.A. 47:1A-5(g).

Plaintiff also argues that Defendant's citation of two exemptions in its denial was conclusory and insufficiently specific. Pl's Reply Br. at 5-6 (citing North Jersey Media Grp. Inc. v. Bergen Cty. Prosecutor's Off., 447 N.J. Super. 182, 204 (App. Div. 2016)). However, even if this were true, this does not demonstrate a knowing or willful violation of OPRA or bad faith on the part of Defendant.

Finally, Plaintiff argues that Defendant did not perform a search for the required records as required by OPRA. Id. at 6-7. This argument hinges mostly on the fact that Defendant's certifications state that a search was performed for records from January 1 to December 31, 2025, when the denial was issued in July 2025. Plaintiff argues that "it would have been impossible for the Division to search for e-mail sent or received through the end of the 2025 calendar year prior to issuing the Denial." Id. at 7. However, the Court reads the certification to state that a search was performed using the entire year of 2025 as the date parameters. This is perfectly possible to do even if the entire year had not yet passed. And even accepting that Defendant's search was insufficient under OPRA, there is nothing on the record to suggest that it constitutes a willful or knowing violation of OPRA.

Finally, to the extent that Plaintiff argues the Court nonetheless has discretionary authority to award counsel fees, the Court starts from the blackletter law that New Jersey is an American Rule jurisdiction. "New Jersey courts historically follow the 'American Rule,' which provides that litigants must bear the cost of their own attorneys' fees ... except[] in eight enumerated circumstances." Innes v. Marzano-Lesnevich, 224 N.J. 584, 592 (2016) (citations omitted). Attorney's fees are not recoverable except when authorized by statute, court rule, or contract. Id. at 593 (citing In re Estate of Vayda, 184 N.J. 115, 121 (2005)); R.

4:42-9(a). “Subject to certain categorical exceptions provided by statute or court rule, New Jersey courts abide by the American [R]ule that all parties in civil litigation pay their own legal fees.” Smith v. Hudson County Register, 422 N.J. Super. 387, 393 (App. Div. 2011). Because Plaintiff is not entitled to counsel fees by N.J.S.A. 47:1A-6 or any other statute, court rule, or contract, the Court declines to otherwise award counsel fees here. The Court therefore denies Plaintiff’s application to impose counsel fees on Defendant.

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