



Camden City and Trenton. Non-voting members of the DVRPC from New Jersey include representatives from New Jersey Transit, the NJ DEPE and New Jersey's Office of State Planning. Also included as a non-voting member and connected to New Jersey interests is the Delaware River Port Authority.

5.
  - a. The DVRPC records are subject to disclosure pursuant to New Jersey's Open Public Records Act, N.J.S.A. 47:1A-1, as it is a "public agency" as defined by the statute.
  - b. The DVRPC website also acknowledges that its records are subject to disclosure under OPRA. <http://www.dvrpc.org/policies/index.htm#disclosure>
6. On February 25, 2010, the DVRPC has awarded Haddon Heights a \$75,000 grant to "develop a form-based code to implement recommendations from the Master Plan reexamination and make updates to the zoning code".
7. On December 29, 2010 Plaintiff Susan Scoblink-O'Neill made an OPRA request of the DVRPC seeking an electronic copy of the standard articles of agreement for selected TCDI grant recipients as well as the application documents from the Borough of Haddon Heights. In addition, she sought all notes, reports, memoranda, documents and otherwise which relate to the application, review, and decision to award the Borough of Haddon Heights the \$75,000 grant.
8. On January 11, 2011 Defendant Snyder on behalf of the DVRPC responded to the OPRA request. The DVRPC supplied the grant application, the award decision and the agreement between Haddon Heights and the DVRPC. It refused to supply any other materials asserting:

*All other materials (including notes, memoranda, emails and other internal communications) are part of the predecisional deliberations used by DVRPC staff, Board members, and committee members to determine the awarding of grants. These are exempt from public disclosure, as per the New Jersey Open Public Records Act, effective January 8, 2002, as well as Section 708(b)(10) of the Pennsylvania Right to Know Law, Act 3 of 2008, effective January 1, 2009.*
9. The Defendants to did not provide a *Vaughn* index.
10. The Defendants did not provide any sort of breakdown or indication of the amount of materials being withheld.
11. The Defendants did not provide redacted documents or records.

12. Plaintiff has not been provided even information that would not be part of the deliberative process. There are no records provided indicating the time line for the process, when meeting were held, who may have been present, what New Jersey representative may have been part of the decision (or not), what the criteria would be for evaluating a grant application, etc.
13. Defendant DVRPC does not post prominently in public view a statement that sets forth in clear, concise and specific terms the right to appeal a denial of, or failure to provide, access to a government record by any person for inspection, examination, or copying or for purchase of copies thereof and the procedure by which an appeal may be filed that conforms with the Open Public Records Act relief of appealing to the GRC or the Superior Court.
14. Defendant does not inform requesters of their rights to appeal to the GRC or the Superior Court at all.
15. Instead, Defendant requires requesters to proceed through it own internal appeals process, to wit:

### **Appeals Procedure**

Whenever a request for a DVRPC public record is denied, the requester may appeal that decision to the Board of the Delaware Valley Regional Planning Commission. To do so the requester must:

Address the appeal, in writing, by mail, or by facsimile, to the:

Chairman of the Board  
Delaware Valley Regional Planning Commission  
190 North Independence Mall West, 8th Floor  
Philadelphia, PA 19106-1520  
Fax 215.592.9125

### **COUNT ONE**

#### **VIOLATION OF THE OPEN PUBLIC RECORDS ACT, N.J.S.A. 47:1A-1, et. seq.**

16. The above allegations are herein incorporated by reference.
17. Defendants have wrongfully withheld records and or have not identified the nature, type, scope and amount of records withheld in violation of New Jersey' Open Public Records Act.
18. Defendants have improperly denied Plaintiff information regarding her rights of appeal which is also a denial of access.
19. Defendants have improperly denied Plaintiff access to public records.

*Wherefore*, Plaintiff requests judgment as follows:

- A. Compelling Defendants to turnover unredacted, legible versions of the documents sought and specify the privilege applicable to any redaction permitted by the Court;
- B. Awarding counsel fees and costs;
- C. Awarding other such relief as the Court may deem fair, equitable and/or necessary to facilitate the Plaintiff's intentions and the directives of OPRA.

**COUNT TWO**  
**DECLARATORY JUDGEMENT ACT, N.J.S.A. 2A:16-50**

- 19. The above allegations are herein incorporated by reference.
- 20. The parties, by this case, have an active dispute regarding their rights, status and obligations.
- 21. Plaintiff contends the DVRPC is a public agency bound to follow the mandates of New Jersey's Open Public Records Act..
- 22. Plaintiff contends her rights of review for her denial of access are defined by New Jersey's Open Public Records Act and not the Defendant's own internal review policy(ies).

*Wherefore*, Plaintiff requests judgment as follows:

- A. Declaring that the DVRPC is an entity subject to the parameters of New Jersey's Open Public Records Act;
- B. Declaring that Plaintiff's right of appeal regarding her denial of access is determined by the parameters of New Jersey's Open Public Records Act and not the DVRPC's own internal appeal procedure;
- C. Declaring that the information provided by the DVRPC to records requesters regarding their rights of appeal is deficient;
- D. Awarding counsel fees and costs;
- E. Awarding other such relief as the Court may deem fair, equitable and/or necessary to facilitate the Plaintiff's intentions and the directives of OPRA.

**COUNT THREE**  
**VIOLATION OF THE NEW JERSEY CIVIL RIGHTS ACT, N.J.S.A. 10:6-1, et. seq.**

23. The above allegations are herein incorporated by reference.
24. By mis-informing Plaintiff and others of their rights to appeal a denial of access, Defendants have deprived Plaintiff and requesters of substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State.
25. By mis-informing Plaintiff and others of their rights to appeal a denial of access, Defendants have interfered with or attempted to be interfere with substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, by the use of coercion.

*Wherefore*, Plaintiff requests judgment as follows:

- A. Enjoining Defendants' current practice and compelling them to disclose appeal rights to records requesters as delineated by New Jersey's Open Public Records Act;
- B. Awarding counsel fees and costs; and
- C. Awarding other such relief as the Court may deem fair, equitable and/or necessary to facilitate the Plaintiff's intentions and the directives of OPRA.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:5-4, Donald M. Doherty, Jr., Esquire is hereby designated as trial counsel on behalf of the plaintiff.

**CERTIFICATION OF COUNSEL PURSUANT TO RULE 4:5-1**

I, the undersigned, hereby certify the matter in controversy is not the subject of any other action in any court nor a pending arbitration proceeding. I further certify that there are no other parties that should be joined to this action.

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:

By: \_\_\_\_\_  
Donald M. Doherty, Jr., Esq.

**Verification**

I, Susan Scoblink-O'Neill, am the Plaintiff in the above matter, and do hereby verify the truth of the statements contained in Paragraphs 1,2,5(b),6,7,8,9,10,11,12,13,14,and 15. The balance of the allegations are either legal theory or based upon information and belief formulated as a result of my discussions with counsel.

\_\_\_\_\_  
By: Susan Scoblink-O'Neill