



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

August 27, 2013 Government Records Council Meeting

Jesse Wolosky
Complainant

Complaint No. 2010-222

v.

Borough of Madison (Morris)
Custodian of Record

At the August 27, 2013 public meeting, the Government Records Council (“Council”) considered the August 20, 2013 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that this complaint be dismissed since the Complainant (via Counsel) withdrew his complaint in a letter to the Honorable Michael Antoniewicz, Administrative Law Judge, dated August 8, 2013, because the parties agreed to settle the matter. Therefore, no further adjudication is required.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 27th Day of August, 2013

Robin Berg Tabakin, Esq., Chair
Government Records Council



I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: August 29, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
August 27, 2013 Council Meeting**

**Jesse Wolosky¹
Complainant**

GRC Complaint No. 2010-222

v.

**Borough of Madison (Morris)²
Custodial Agency**

Records Relevant to Complaint:

1. The actual existing official payroll record showing actual gross income earned and other data for the Municipal Clerk or their last pay stub for 2009.
2. The detail vendor activity report by vendor name for the Municipal Clerk from January 1, 2005 to the present time showing the Municipal Clerk's reimbursements.
3. The Municipal Clerk's resume on file with the municipality.
4. The Municipal Clerk's current financial disclosure statement.

Custodian of Record: Elizabeth Osborne

Request Received by Custodian: July 26, 2010

Response Made by Custodian: July 28, 2010

GRC Complaint Received: August 16, 2010

Background

July 31, 2012 Council Meeting:

At its July 31, 2012 public meeting, the Council considered the July 24, 2012 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. Because the Custodian disclosed to the Complainant all records ordered for disclosure pursuant to the Council's June 26, 2012 Interim Order, and provided certified confirmation of compliance to the Executive Director within the time period provided for compliance with said Order, the Custodian fully complied with the Council's June 26, 2012 Interim Order.
2. Although the Council determined in its Interim Order dated June 26, 2012 that the Custodian's failure to furnish the requested resume was an unlawful denial of access,

¹ Represented by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC (Clinton, NJ).

² Represented by Matt Giacobbe, Esq., of Cleary, Giacobbe, Alfieri, Jacobs, LLC (Oaklyn, NJ).

the Custodian did not unlawfully deny the Complainant access to the Clerk's home address information pursuant to N.J.S.A. 47:1A-1 and the Custodian timely complied with the Council's June 26, 2012 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

3. Pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." *Id.* at 432. Additionally, pursuant to Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian provided the Complainant with the requested resume in accordance with the Council's June 26, 2012 Interim Order. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, Teeters, *supra*, and Mason, *supra*. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. Based on the New Jersey Supreme Court's decision in New Jerseyans for a Death Penalty Moratorium v. NJ Department of Corrections, 185 N.J. 137, 156-158 (2005) and the Council's decisions in Wolosky v. Township of Sparta (Sussex), GRC Complaint Nos. 2008-219 and 2008-277 (November 2011), an enhancement of the lodestar fee is not appropriate in this matter because the facts of this complaint do not rise to a level of "unusual circumstances ... justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

Procedural History:

On August 3, 2012, the Council distributed its Interim Order to all parties. On January 15, 2013, the complaint was transmitted to the Office of Administrative Law ("OAL"). On August 8, 2013, the Complainant's Counsel sent a letter to the Honorable Michael Antoniewicz, Administrative Law Judge, withdrawing this complaint because the parties agreed to settle the matter.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint be dismissed since the Complainant (via Counsel) withdrew his complaint in a letter to the

Honorable Michael Antoniewicz, Administrative Law Judge, dated August 8, 2013, because the parties agreed to settle the matter. Therefore, no further adjudication is required.

Prepared By: Frank F. Caruso
Senior Case Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

August 20, 2013