



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**PHILIP D. MURPHY**  
*Governor*

**LT. GOVERNOR SHEILA Y. OLIVER**  
*Commissioner*

**FINAL DECISION**

**December 14, 2021 Government Records Council Meeting**

Rotimi Owoh, Esq. (o/b/o African American  
Data & Research Institute)  
Complainant

Complaint No. 2018-175

v.

Borough of Red Bank (Monmouth)  
Custodian of Record

At the December 14, 2021 public meeting, the Government Records Council (“Council”) considered the December 8, 2021 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 the Council dismiss this complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant’s Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. 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 14<sup>th</sup> Day of December 2021

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: December 16, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

*Prevailing Party Attorney's Fees*  
**Supplemental Findings and Recommendations of the Executive Director  
December 14, 2021 Council Meeting**

**Rotimi Owoh, Esq., (On Behalf of<sup>1</sup>  
African American Data & Research Institute)  
Complainant**

**GRC Complaint No. 2018-175**

v.

**Borough of Red Bank (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:<sup>3</sup>

1. Copies of Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) complaints prepared and filed by the Borough of Red Bank Police Department (“RBPD”) from January 2018 through present.
2. Drug possession complaints prepared and filed by the RBPD from January 2018 through present.
3. Drug paraphernalia complaints and summonses prepared by the RBPD from January 2018 through present.

**Custodian of Record:** Pamela Borghi

**Request Received by Custodian:** July 24, 2018

**Response Made by Custodian:** July 26, 2018; August 2, 2018; August 7, 2018

**GRC Complaint Received:** August 9, 2018

**Background**

August 24, 2021 Council Meeting:

At its August 24, 2021 public meeting, the Council considered the August 17, 2021 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. The Custodian failed to comply with the Council’s May 19, 2020 Interim Order. Specifically, although the Custodian timely provided the Complainant with the

---

<sup>1</sup> The Complainant represents the African American Data and Research Institute.

<sup>2</sup> Represented by Gregory J. Cannon, Esq. of Sobel Han & Cannon, LLP (Aberdeen, NJ).

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

responsive records, she did not provide a certified confirmation of compliance to the Executive Director within the prescribed time frame.

2. The Custodian improperly imposed a special service charge to process the Complainant's OPRA request. N.J.S.A. 47:1A-5(c). Additionally, the Custodian failed to comply with the Council's May 19, 2020 Interim Order. However, the Custodian demonstrated that she provided responsive records to the Complainant in accordance with the 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, 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 the Council's May 19, 2020 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Custodian was ordered to provide the requested records without the imposition of a special service charge. 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. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

#### Procedural History:

On August 25, 2021, the Council distributed its Interim Order to all parties. On September 29, 2021, the GRC notified the parties that the deadline to notify the GRC of a settlement for counsel fees expired on September 23, 2021 and provided a deadline of October 22, 2021 for the Complainant to submit a fee application. On September 30, 2021, the Complainant responded to the GRC, stating that a settlement had been reached with the Borough of Red Bank ("Borough"). The Custodian's Counsel also responded stating that a settlement had been reached.

On September 30, 2021, the GRC inquired with Counsel as to whether the parties required additional time to formalize the settlement, and if so, how much time was needed for same. No response was received from Counsel.

On November 3, 2021, the GRC informed the parties that the deadline to notify the GRC of a settlement had expired. The GRC also stated that although the parties stated that a settlement had been reached, the GRC did not receive confirmation that the settlement had been formalized,

or that additional time was needed. The GRC thus requested said confirmation from the parties. On November 4, 2021, Counsel provided the GRC with a signed copy of Resolution 21-280 dated October 20, 2021, which authorized the Borough Administrator and Counsel to enter settlement with the Complainant regarding counsel fees in the instant matter for \$4,275.00.

### **Analysis**

#### **Prevailing Party Attorney's Fees**

At its August 24, 2021 meeting, the Council determined that the Complainant was a prevailing party entitled to an award of reasonable attorney's fees. The Council thus ordered that the "parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days." The Council further ordered that the parties notify of any settlement prior to the expiration of the twenty (20) business day time frame. Finally, the Council ordered that, should the parties not reach an agreement, the Complainant's Counsel would be required to "submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13."

On August 25, 2021, the Council distributed its Interim Order to all parties; thus, the Complainant's response was due by close of business on September 23, 2021. On September 29, 2021, the GRC notified the parties that the deadline to notify the GRC of a settlement for counsel fees expired on September 23, 2021 and provided a deadline for the Complainant to apply for counsel fees. The parties responded to the GRC September 30, 2021, stating that a settlement had been reached that same day. The GRC inquired as to whether the Borough needed additional time to confirm the settlement, but no response was received.

On November 3, 2021, the GRC again requested confirmation of the settlement between the parties regarding counsel fees. On November 4, 2021, the Custodian's Counsel responded to the GRC, providing a copy of the Borough's Resolution 21-280, which authorized the fee settlement pertaining to the instant matter.

Accordingly, the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant's Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Council dismiss this complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant's Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Prepared By: Samuel A. Rosado  
Staff Attorney

December 8, 2021



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**INTERIM ORDER**

**August 24, 2021 Government Records Council Meeting**

Rotimi Owoh, Esq. (o/b/o African American  
Data and Research Institute)

Complaint No. 2018-175

Complainant

v.

Borough of Red Bank (Monmouth)  
Custodian of Record

At the August 24, 2021 public meeting, the Government Records Council (“Council”) considered the August 17, 2021 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:

1. The Custodian failed to comply with the Council’s May 19, 2020 Interim Order. Specifically, although the Custodian timely provided the Complainant with the responsive records, she did not provide a certified confirmation of compliance to the Executive Director within the prescribed time frame.
2. The Custodian improperly imposed a special service charge to process the Complainant’s OPRA request. N.J.S.A. 47:1A-5(c). Additionally, the Custodian failed to comply with the Council’s May 19, 2020 Interim Order. However, the Custodian demonstrated that she provided responsive records to the Complainant in accordance with the 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, 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 the Council’s May 19, 2020 Interim Order, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Custodian was ordered to provide the requested records without the imposition of a special service charge. 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. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to**

**Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Interim Order Rendered by the  
Government Records Council  
On The 24<sup>th</sup> Day of August 2021

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 25, 2021**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
August 24, 2021 Council Meeting**

**Rotimi Owoh, Esq., (On Behalf of<sup>1</sup>  
African American Data & Research Institute)  
Complainant**

**GRC Complaint No. 2018-175**

v.

**Borough of Red Bank (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:<sup>3</sup>

1. Copies of Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) complaints prepared and filed by the Borough of Red Bank Police Department (“RBPD”) from January 2018 through present.
2. Drug possession complaints prepared and filed by the RBPD from January 2018 through present.
3. Drug paraphernalia complaints and summonses prepared by the RBPD from January 2018 through present.

**Custodian of Record:** Pamela Borghi

**Request Received by Custodian:** July 24, 2018

**Response Made by Custodian:** July 26, 2018; August 2, 2018; August 7, 2018

**GRC Complaint Received:** August 9, 2018

**Background**

May 19, 2020 Council Meeting:

At its May 19, 2020 public meeting, the Council considered the May 12, 2020 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. The Custodian’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person

---

<sup>1</sup> The Complainant represents the African American Data and Research Institute.

<sup>2</sup> Represented by Gregory J. Cannon, Esq. of Sobel Han & Cannon, LLP (Aberdeen, NJ).

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

concerning a denial of access to a government record by a records custodian . . .”  
N.J.S.A. 47:1A-7(b).

2. The Custodian has not proved that a special service charge was warranted or reasonable here. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that five (5) or six (6) hours represents an “extraordinary amount of time and effort” to prepare and disclose the requested records. See N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002); Rivera v. Borough of Fort Lee Police Dep’t (Bergen), GRC Complaint No. 2009-285 (Interim Order dated May 24, 2011). Further, the Custodian failed to prove that the copy cost associated with providing the records electronically was the “actual cost.” Thus, the Custodian shall disclose the responsive records without the imposition of a special service charge.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>4</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>5</sup> to the Executive Director.<sup>6</sup>**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian’s compliance with the Council’s Interim Order.

#### Procedural History:

On May 20, 2020, the Council distributed its Interim Order to all parties. On May 28, 2020, the Custodian e-mailed the Complainant with the requested records. On June 15, 2020, the Custodian e-mailed the GRC, notifying that responsive records were sent to the Complainant and included a copy of the May 28, 2020 e-mail.

On July 2, 2021, the GRC sent an e-mail to the Custodian, stating that while she provided evidence that she provided the Complainant with responsive records, she had not provided a certified confirmation of compliance to the Executive Director. On July 13, 2021, the GRC submitted another e-mail to the Custodian. On July 16, 2021, Custodian’s Counsel replied to the

---

<sup>4</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>5</sup> "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."

<sup>6</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.



GRC stating that they did not receive the Interim Order until July 2, 2021, and therefore needed additional time to process the request.

On July 22, 2021, the GRC replied to Counsel stating that the Custodian provided the Complainant with responsive records on May 28, 2020, and that the only item that was missing was the certification. That same day, Counsel responded to the GRC stating that the records were in fact provided on May 28, 2020, and that a certification would be provided in turn.

On August 5, 2021, Counsel provided a certification from the Custodian. Therein, the Custodian certified that she provided the Complainant with the responsive records on May 28, 2020.

## **Analysis**

### **Compliance**

At its May 19, 2020 meeting, the Council ordered the Custodian to locate and provide access to the requested records. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On May 20, 2020, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on May 28, 2020.

On May 28, 2020, the fifth (5<sup>th</sup>) business day after receipt of the Council's Order, the Custodian e-mailed the Complainant, providing copies of the responsive records as attached. On June 15, 2020, the Custodian e-mailed the GRC, stating that she provided the Complainant with the responsive records. However, the Custodian did not provide a certified confirmation of compliance to the Executive Director until August 5, 2021, several months after receipt. Thus, the Custodian did not fully comply with the Order due to a timeliness issue.

Therefore, the Custodian failed to comply with the Council's May 19, 2020 Interim Order. Specifically, although the Custodian timely provided the Complainant with the responsive records, she did not provide a certified confirmation of compliance to the Executive Director within the prescribed time frame.

### **Knowing & Willful**

OPRA states that “[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the matter before the Council, the Custodian improperly imposed a special service charge to process the Complainant's OPRA request. N.J.S.A. 47:1A-5(c). Additionally, the Custodian failed to comply with the Council's May 19, 2020 Interim Order. However, the Custodian demonstrated that she provided responsive records to the Complainant in accordance with the 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, 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.

### **Prevailing Party Attorney's Fees**

OPRA provides that:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . .; or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council . . . A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

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

In Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006), the Appellate Division held that a complainant is a "prevailing party" if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct. *Id.* at 432. Additionally, the court held that attorney's fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. *Id.*

Additionally, the New Jersey Supreme Court has ruled on the issue of "prevailing party" attorney's fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, "which posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the

defendant's conduct" (quoting Buckhannon Bd. & Care Home v. West Virginia Dep't of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court held that the phrase "prevailing party" is a legal term of art that refers to a "party in whose favor a judgment is rendered." Id. at 603 (quoting Black's Law Dictionary 1145 (7<sup>th</sup> ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because "[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties . . ." Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863. Further, the Supreme Court expressed concern that the catalyst theory would spawn extra litigation over attorney's fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

However, the Court noted in Mason that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, 387 N.J. Super. at 429; see, e.g., Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). "But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes." 196 N.J. at 73 (citations omitted).

The Mason Court accepted the application of the catalyst theory within the context of OPRA, stating that:

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that "[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6. Under the prior RTKL, "[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney's fee not to exceed \$500.00." N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

[196 N.J. at 73-76.]

The Court in Mason, further held that:

[R]equestors are entitled to attorney's fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (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." Singer v. State, 95 N.J. 487, 495, cert. denied, New Jersey v. Singer, 469 U.S. 832 (1984).

[Id. at 76.]

In the instant matter, the Complainant sought complaints and summonses prepared by RBPD pertaining to drug possession, drug paraphernalia, and DUI/DWI offenses. In response, the

Custodian assessed a special service charge to process the request. The Complainant filed this instant matter asserting that the special service charge was unwarranted.

In determining whether the Complainant is a prevailing party entitled to attorney's fees, the GRC is satisfied that the evidence of record supports a conclusion in the affirmative. In accordance with the Council's May 19, 2020 Interim Order, the Custodian was required to provide the responsive records without the imposition of a special service charge, which was the Complainant's desired result in filing the instant complaint. Teeters, 387 N.J. Super. at 432. Thus, a causal nexus exists between this complaint and the change in the Custodian's conduct. Mason 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney's fees.<sup>7</sup>

Therefore, pursuant to the Council's May 19, 2020 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters, 387 N.J. Super. 432. Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. 51. Specifically, the Custodian was ordered to provide the requested records without the imposition of a special service charge. 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. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council's May 19, 2020 Interim Order. Specifically, although the Custodian timely provided the Complainant with the responsive records, she did not provide a certified confirmation of compliance to the Executive Director within the prescribed time frame.
2. The Custodian improperly imposed a special service charge to process the Complainant's OPRA request. N.J.S.A. 47:1A-5(c). Additionally, the Custodian failed to comply with the Council's May 19, 2020 Interim Order. However, the Custodian demonstrated that she provided responsive records to the Complainant in accordance with the 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

---

<sup>7</sup> The Council makes this determination with the understanding that the Complainant acted on behalf of a bona fide client at the time of the request. Although the Complainant's status as representing an actual client has been previously challenged, the available evidence on the record is insufficient to address that issue herein. See Owoh, Esq. (O.B.O. AADARI) v. Neptune City Police Dep't (Monmouth), GRC Complaint No. 2018-153 (April 2020) and Owoh, Esq. (O.B.O. AADARI) v. Freehold Twp. Police Dep't (Monmouth), GRC Complaint No. 2018-155 (Interim Order dated September 29, 2020).

intentional and deliberate. Therefore, 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 the Council's May 19, 2020 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Custodian was ordered to provide the requested records without the imposition of a special service charge. 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. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Prepared By: Samuel A. Rosado  
Staff Attorney

August 17, 2021



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**INTERIM ORDER**

**May 19, 2020 Government Records Council Meeting**

Rotimi Owoh, Esq. (o/b/o African  
American Data and Research Institute)  
Complainant

Complaint No. 2018-175

v.

Borough of Red Bank (Monmouth)  
Custodian of Record

At the May 19, 2020 public meeting, the Government Records Council (“Council”) considered the May 12, 2020 Findings and Recommendations of the Council Staff 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:

1. The Custodian’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Custodian has not proved that a special service charge was warranted or reasonable here. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that five (5) or six (6) hours represents an “extraordinary amount of time and effort” to prepare and disclose the requested records. See N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002); Rivera v. Borough of Fort Lee Police Dep’t (Bergen), GRC Complaint No. 2009-285 (Interim Order dated May 24, 2011). Further, the Custodian failed to prove that the copy cost associated with providing the records electronically was the “actual cost.” Thus, the Custodian shall disclose the responsive records without the imposition of a special service charge.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>1</sup>**

<sup>1</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

**certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>2</sup> to the Executive Director.<sup>3</sup>**

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 19<sup>th</sup> Day of May 2020

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: May 20, 2020**

---

<sup>2</sup> "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."

<sup>3</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 19, 2020 Council Meeting**

**Rotimi Owoh, Esq., (On Behalf of<sup>1</sup>  
African American Data & Research Institute)  
Complainant**

**GRC Complaint No. 2018-175**

v.

**Borough of Red Bank (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:<sup>3</sup>

1. Copies of Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) complaints prepared and filed by the Borough of Red Bank Police Department (“RBPD”) from January 2018 through present.
2. Drug possession complaints prepared and filed by the RBPD from January 2018 through present.
3. Drug paraphernalia complaints and summonses prepared by the RBPD from January 2018 through present.

**Custodian of Record:** Pamela Borghi

**Request Received by Custodian:** July 24, 2018

**Response Made by Custodian:** July 26, 2018; August 2, 2018; August 7, 2018

**GRC Complaint Received:** August 9, 2018

**Background<sup>4</sup>**

**Request and Response:**

On July 24, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 26, 2018, the Custodian responded in writing seeking an extension of time until August 6, 2018, but also stated that the requested items were court records and not subject to OPRA.<sup>5</sup>

---

<sup>1</sup> The Complainant represents the African American Data and Research Institute.

<sup>2</sup> No legal representation listed on record.

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

<sup>4</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

<sup>5</sup> The Complainant did not include a copy of the Custodian’s July 26, 2018 correspondence.

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. Borough of Red Bank (Monmouth), 2018-175 – Findings and Recommendations of the Executive Director



Later in the day on July 26, 2018, the Complainant responded to the Custodian stating that he consented to the extension request. The Complainant also stated that he expected either the Borough of Red Bank (“Borough”) or the RBPB to provide the requested complaints and summonses. The Complainant also requested the Custodian inform him immediately if the Borough or RBPB did not intend on providing the records.

On August 2, 2018, the Custodian e-mailed the Complainant stating that she confirmed with the Court Administrator for the Red Bank Municipal Court (“Court”) that the Court was not subject to OPRA and the Complainant would need to file a separate request directly to same. The Custodian also stated that she confirmed with the RBPB that they may have paper copies of the records on file. The Custodian stated that RBPB’s Records Officer reviewed the procedure to manually search RBPB’s files for the years 2016-2018. The Custodian stated that using the Government Records Council’s (“GRC”) 14-point analysis, the RBPB determined that a special service charge of approximately \$500 would be imposed. The Custodian asked the Complainant to confirm whether he would accept the estimated fee. The Complainant replied seeking a copy of the 14-point analysis justifying the \$500 estimate. The Complainant also stated that other police departments have provided responsive records without charge or at a lower rate than the Borough.

Later in the day on August 2, 2018, the Custodian responded to the Complainant providing a copy of the Borough’s responses to the 14-point analysis:

**1. What records are requested?**

**Response:** Copies of DWI/DUI complaints prepared and filed by the RBPB from January 2016 through present. There is no way to print out a copy of the requested documents. The only way they are in the police case file is when a discovery request is made, and the municipal court administrator provides a copy to complete the discovery request. A copy is then placed in the police case folder.

**2. Give a general nature description and number of the government records requested.**

**Response:** After a cursory check of our Cody Records Management System sixty-seven (67) cases were located for the 2016 DWI.

**3. What is the period of time over which the records extend?**

**Response:** The records extend from January 2016 to December 2016.

**4. Are some or all of the records sought archived or in storage?**

**Response:** All of the records sought are in storage in the file room of the records division at RBPB headquarters.

**5. What is the size of the agency (total number of employees)?**

**Response:** The size of the agency is forty-five (45).

**6. What is the number of employees available to accommodate the records request?**

**Response:** The number of employees available to accommodate the request is two (2).

**7. To what extent do the requested records have to be redacted?**

**Response:** The requested records have to be manually checked and personal information has to be redacted from the complaint, summons, and tickets.

**8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve, and assemble the records for copying?**

**Response:** The Records Clerk's hourly rate is \$22.35, number of hours to locate, retrieve and assemble the records for copying was 3 hours.

**9. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?**

**Response:** Answer to this is included in number 8 above.

**10. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to return records to their original storage place?**

**Response:** Answer to this is included in number 8 above.

**11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?**

**Response:** Personnel in the RBPD Records Bureau handle the requests for OPRA from the Custodian.

**12. Who (name and job title) in the agency will perform the work associated with the records request and that person's hourly rate?**

**Response:** Records Clerk Muttie's hourly rate is \$22.35.

**13. What is the availability of information technology and copying capabilities?**

**Response:** The complaints, summonses, and tickets must be manually located in the case folders, which are in storage in the file room of RBPD headquarters, then the requested complaints, summonses, and tickets have to be located in the case folder and copied. The case folder then needs to be replaced in storage in the file room, the requested document copies need to be redacted, then the complete year was scanned on the Xerox machine to produce a PDF file.

**14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce, and return the requested documents.**

**Response:** The detailed estimate for the entire OPRA request is based on the above completion of the 2016 DWI request. To produce the sixty-seven (67) records it took 3 hours. Based on this time consumption, 2017 has fifty-one (51) cases and 2018 has fifty-one (51) cases, so approximately five (5) hours to complete the DWI (Item No. 1 on the OPRA request.

There are approximately 300 drug possession and drug paraphernalia complaints from January 2016 to present. Based on the time to complete the 2016 DWI cases that would be about 14.5 hours to complete. In total it is estimated to take 22.5 hours to complete the entire OPRA request. That would be about \$500 plus costs.

On August 2, 2018, the Complainant responded to the Custodian stating that based on the analysis the Borough was charging approximately \$500 for 462 cases. The Complainant stated that the estimate was excessive, and therefore requested the cost to provide records from January 2018 to the present.

On August 7, 2018, the Custodian responded to the Complainant stating that a review of RBPD's files located a total of 127 cases. The Custodian stated that the estimated time to complete was five (5) to six (6) hours at \$22.35 per hour, for a total estimate between \$111.75 to \$134.10 plus \$6.35 for copying costs. The Custodian stated that the cost would be adjusted based on the actual time to complete the search.

Denial of Access Complaint:

On August 8, 2018, the Complainant filed a Denial of Access Complaint with the GRC. The Complainant asserted that he submitted his OPRA request on July 25, 2018 and the Custodian responded on July 26, 2018.

The Complainant asserted that the Custodian's initial special service charge estimate was excessive and charging \$500 for 462 pages of records amounted to around \$1.08 per page. The Complainant asserted that because of the excessive charge he reduced the requested time frame from January 2016 to January 2018 to the present. The Complainant asserted that the Custodian's revised estimate was also excessive as the charge of up to \$134.10 plus \$6.36 for copying costs amounted to \$1.10 per page, higher than the initial estimate. The Complainant argued that other police departments have provided the same records without imposing a special service charge.

The Complainant requested that the Council find the Custodian in violation of OPRA for charging excessive costs, and to award him counsel fees.

Statement of Information:

On August 23, 2018, the GRC sent the Custodian a request for the Statement of Information ("SOI"). The Custodian failed to submit the SOI to the GRC. On September 14, 2018, the GRC

sent the Custodian a “No Defense” letter, stating that if the GRC did not receive the SOI within three (3) business days, the complaint would proceed to adjudication based only upon the information contained within the complaint. The Custodian failed to submit the SOI or otherwise respond to the GRC’s notice.

## Analysis

### Failure to Submit SOI

OPRA also provides that “Custodians shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]” N.J.A.C. 5:105-2.4(a).

OPRA further provides that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

[N.J.A.C. 5:105-2.4(f).]

Finally, OPRA provides that “[a] custodian’s failure to submit a completed and signed SOI . . . may result in the Council’s issuing a decision in favor of the complainant.” N.J.A.C. 5:105-2.4(g). In Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus, the Council noted the custodian’s failure to adhere to N.J.A.C. 5:1052.4(a). See also Kovacs v. Irvington Police Dep’t (Essex), GRC Complaint No. 2014-196 (January 2015); Howell v. Twp. of Greenwich (Warren), GRC Complaint No. 2015-249 (November 2016).

In the instant matter, the Custodian did not comply with the GRC’s initial request for an SOI. After the expiration of the five (5) business day deadline, the GRC again attempted to obtain a completed SOI from the Custodian by sending a “No Defense” letter and requesting a completed SOI within three (3) business days of receipt. The Custodian failed to submit an SOI within the three (3) business days or otherwise response to the GRC’s letter.

Accordingly, the Custodian’s failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).

### Special Service Charge

Whenever a records custodian asserts that fulfilling an OPRA records request requires an

“extraordinary” expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides that:

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an *extraordinary expenditure of time and effort to accommodate the request*, the public agency may charge, in addition to the actual cost of duplicating the record, a *special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies . . .*

[Id. (emphasis added).]

The determination of what constitutes an “extraordinary expenditure of time and effort” under OPRA must be made on a case by case basis and requires an analysis of a variety of factors. These factors were discussed in Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002). There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the “extraordinary burden” placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

The court determined that in the context of OPRA, the term “extraordinary” will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. Id. at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” Id.

Moreover, OPRA provides that providing access to records electronically “shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs.” N.J.S.A. 47:1A-5(b); see also McBride v. Borough of Mantoloking (Ocean), GRC Complaint No. 2009-138 (Interim Order dated April 8, 2010). However, the foregoing does not necessarily mean that a custodian can never charge for electronic delivery unless supplies are involved. For example, the Council has also previously held that a

custodian could charge a per-page copy cost for redacted records if the agency did not have ability to electronically redact same. Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). Thus, it follows that requestors seeking records electronically may be subject to the imposition of actual costs for duplication of records. N.J.S.A. 47:1A-5(b)-(c).

In the instant matter, the Complainant disputed the assessed special service charge of up to \$134.10 for 127 records comprising complaints and summonses. The Complainant argued that the fee was unwarranted since he reduced his request's time frame by two (2) years to avoid paying an initial estimated charge of approximately \$500 for 452 records. The Complainant also asserted that other police departments provided the same records without imposing any special service charge.

Upon review of the evidence, the GRC is not satisfied that an expenditure of five (5) to six (6) hours represents an "extraordinary amount of time and effort" for two (2) employees to review and redact 127 cases. Courier Post, 360 N.J. Super. at 199. In Rivera v. Borough of Fort Lee Police Dep't (Bergen), GRC Complaint No. 2009-285 (Interim Order dated May 24, 2011), the agency estimated just seven (7) hours of work to review and redact 411 pages of records for personal information, utilizing three (3) employees. Additionally, the Custodian's 14-point analysis did not elaborate as to what daily functions would be disrupted or were beyond the scope of the employees' regular job duties.

Notably, the Custodian's 14-point analysis indicated that the records could not be printed directly and were maintained in paper format in RBPD storage. However, there is no evidence in the record that the Borough did not have the means to redact the records electronically, as was the case in Paff, GRC 2010-09. Therefore, the estimated copying cost of \$6.36 is not supported by the evidence.

Accordingly, the Custodian has not proved that a special service charge is warranted or reasonable here. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that five (5) or six (6) hours represents an "extraordinary amount of time and effort" to prepare and disclose the requested records. See N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. at 199; Rivera, GRC 2009-285. Further, the Custodian failed to prove that the copy cost associated with providing the records electronically was the "actual cost." Thus, the Custodian shall disclose the responsive records without the imposition of a special service charge.

### **Knowing & Willful**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

### **Prevailing Party Attorney's Fees**

The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian's failure to respond additionally obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . ." N.J.S.A. 47:1A-7(b).
2. The Custodian has not proved that a special service charge was warranted or reasonable here. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that five (5) or six (6) hours represents an "extraordinary amount of time and effort" to prepare and disclose the requested records. See N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002); Rivera v. Borough of Fort Lee Police Dep't (Bergen), GRC Complaint No. 2009-285 (Interim Order dated May 24, 2011). Further, the Custodian failed to prove that the copy cost associated with providing the records electronically was the "actual cost." Thus, the Custodian shall disclose the responsive records without the imposition of a special service charge.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>6</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>7</sup> to the Executive Director.<sup>8</sup>**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado  
Staff Attorney

May 12, 2020

---

<sup>6</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>7</sup> "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."

<sup>8</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. Borough of Red Bank (Monmouth), 2018-175 – Findings and Recommendations of the Executive Director