



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

June 30, 2020 Government Records Council Meeting

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

Complaint No. 2018-199

v.

Township of Upper (Cape May)
Custodian of Record

At the June 30, 2020 public meeting, the Government Records Council (“Council”) considered the June 23, 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, finds that:

1. The Custodian was under no obligation to obtain and disclose records created by the New Jersey State Police resulting from law enforcement activities within the Township of Upper. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 38-39 (App. Div. 2005); N.J.S.A. 53:2-1. Furthermore, the Custodian was under no obligation to provide responsive records located at the Upper Township Municipal Court, as OPRA does not apply to the Judiciary. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-7(g). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.
2. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the Custodian’s conduct. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, no 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 had no obligation to retrieve and disclose the responsive records located at the Upper Township Municipal Court, since OPRA does not apply to the Judiciary. N.J.S.A. 47:1A-7(g). Therefore, the Complainant is not 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.

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 30th Day of June 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: July 2, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 30, 2020 Council Meeting**

**Rotimi Owoh, Esq. (On Behalf of¹
Baffis Simmons and African American Data
& Research Institute)
Complainant**

GRC Complaint No. 2018-199

v.

**Township of Upper (Cape May)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:

1. Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) complaints prepared and filed by the Police Department from January 2017 through present.
2. Drug possession complaints prepared and filed by the Police Department from January 2017 through present.
3. Police Department’s “Arrest Listings” from January 2017 through present.
4. Drug paraphernalia complaints and summonses prepared by the Police Department from January 2017 through present.

Custodian of Record: Barbara L. Young
Request Received by Custodian: August 26, 2018
Response Made by Custodian: August 27, 2018
GRC Complaint Received: September 10, 2018

Background³

Request and Response:

On August 26, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 27, 2018, the Custodian responded in writing stating that Upper Township (“Township”) did not have a police department, and that law enforcement was provided by the New Jersey State Police (“NJSP”). The Custodian stated that therefore no records exist. On the same day, Complainant e-mailed the Custodian stating

¹ The Complainant represents the African American Data and Research Institute.

² Represented by Frank L. Corrado, Esq. of Barry, Corrado, Grassi & Gillin-Schwartz, P.C. (Wildwood, N.J.). Previously represented by Daniel J. Young, Esq. of The Law Offices of Daniel J. Young (Ocean City, N.J.).

³ 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.

Rotimi Owoh, Esq. (On Behalf of Baffis Simmons and African American Data & Research Institute) v. Township of Upper (Cape May), 2018-199 – Findings and Recommendations of the Executive Director

that he still expected the records since a police department covered the Township. The Custodian replied stating that the Township has no local police department and was patrolled by NJSP.

Denial of Access Complaint:

On September 10, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that as of September 8, 2018, the Custodian has not provided any responsive records or requested an extension of time to respond. The Complainant requested that the Council find that the Custodian violated OPRA in accordance with Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); and Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). The Complainant also requested that he be awarded prevailing party attorney’s fees.

Statement of Information:

On October 4, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on August 26, 2018. The Custodian certified that no search was conducted since the Township did not have a police department. The Custodian certified that police protection was provided by NJSP under N.J.S.A. 53:2-1.

The Custodian asserted that under N.J.S.A. 53:2-1, NJSP was obligated to provide police services for the Township since it lacked a police department. The Custodian asserted that the Township did not receive police services from NJSP due to a shared services agreement or any other contractual agreement. The Custodian asserted that under N.J.S.A. 47:1A-1.1, the Township was not the custodian of the requested records, but instead the Complainant should have submitted the request to NJSP.

Additional Submissions:

On October 7, 2018, the Complainant submitted a brief in response to the Custodian’s SOI. The Complainant asserted that pursuant to Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), the Township was obligated to obtain the complaints and summonses from either NJSP’s barracks or the Township’s municipal prosecutor. The Complainant argued that NJSP has an agency relationship with the Township under N.J.S.A. 53:2-1. The Complainant argued that the Township had a municipal court, the Upper Township Municipal Court (“Court”), and NJSP officers needed the services of the Township’s municipal prosecutor to adjudicate matters within the Township’s jurisdiction. The Complainant argued that because the municipal prosecutor was a Township employee, their records were subject to access under OPRA and should have been disclosed accordingly. The Complainant asserted that this requirement was consistent with court decisions where defendants argued that a requestor was required to obtain records from the courts. AADARI v. Woodbridge Twp., Docket No. MID-L-2052-18 (Law Div. May 12, 2018).

The Complainant further asserted that municipalities were required to retain summonses and complaints for at least fifteen (15) years as part of a “Municipal Prosecutor’s Case File.” The

Complainant asserted that as an employee of the Township, the municipal prosecutor should have provided the Custodian with any available complainants and summonses, who in turn would deliver to the Complainant. The Complainant asserted that if the responsive records were in storage or otherwise unavailable, the Custodian was obligated to extend the response period but failed to do so. N.J.S.A. 47:1A-5(i).

The Complainant also asserted that based upon his experience, DUI/DWI or drug possession charges normally included sample testing by NJSP. The Complainant alleged that this testing averaged between three (3) and six (6) months. The Complainant asserted that the Township should have provided the Complainant with copies of complaints and summonses within the municipal prosecutor's control while the samples were being tested. The Complainant asserted that to the contrary, the Custodian failed to disclose any records as of the date of his letter brief.

Lastly, the Complainant contended that based on the forgoing, the Council should order the Township to disclose the responsive records. The Complainant further asserted that the Council should award him prevailing party attorney's fees. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006).

On January 16, 2019, the Custodian's Counsel e-mailed the GRC in response to the Complainant's reply brief. Counsel asserted that the Complainant's initial OPRA request sought complaints and summonses from the Township's police department. Counsel asserted that the Complainant's reply modified the original request to seek records from the Court rather than the police department. Counsel asserted that this modification constituted a new or amended request and was therefore improper.

Counsel next asserted that notwithstanding the above, the Township searched its Court's records and located the requested summonses and complaints. Counsel asserted that the Township provided the records to the Complainant in a show of good faith and asked him to voluntarily withdraw the matter.

On January 26, 2019, the Complainant e-mailed the GRC, stating he received the responsive records from the Township after the complainant filing. The Complainant asserted that the only outstanding issue was the award of counsel fees.

On January 29, 2019, Custodian's Counsel submitted a response to the Complainant, asserting the Complainant was not a prevailing party. Counsel argued that the Township maintained that it properly denied access to the Complainant's request since it sought records from a non-existent entity. Counsel asserted that the Complainant's October 7, 2018 reply brief altered the request to seek records from the Court. Counsel asserted that in a show of good faith the Township retrieved responsive records from the Court while arguing that it had no obligation to do so. Counsel argued that the Complainant received the responsive records before filing a proper OPRA request and should not be awarded counsel fees.

That same day, the Complainant e-mailed the GRC, asserting that the current matter's procedural history demonstrated that but for his complaint filing the Township would not have provided responsive records on January 16, 2019. The Complainant asserted that based upon the

“catalyst” theory outlined in Teeters, 387 N.J. Super. at 429-31, a prevailing party must show that the lawsuit was casually related to securing the relief obtained, and that the relief granted had some basis in law. The Complainant argued that under Warrington v. Vill. Supermarkets, Inc., 328 N.J. Super. 410, 420 (App. Div. 2000), a prevailing party succeeds when the relief on the merits materially alters the relationship between the parties.

The Complainant asserted that the Township received the request until August 2018 but did not provide responsive records under after the complaint was filed in September 2018. The Complainant also asserted that the Township did not disclose the responsive records until after it retained Counsel in January 2019. The Complainant therefore argued that the complaint was the catalyst that prompted the Township to disclose responsive records in January 2019. Warrington, 328 N.J. Super. at 420. The Complainant thus requested the GRC award counsel fees pursuant to Teeters, 387 N.J. Super. 423.

On February 7, 2019, Counsel e-mailed the GRC, asserting that the Complainant never provided a proper OPRA request at the outset, and therefore could not be a prevailing party. Counsel argued that the Complainant was not entitled to counsel fees simply because the Township acted beyond what the law required.

Analysis

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In Burnett, 415 N.J. Super. 506, the Appellate Division determined that the defendant was required to obtain settlement agreements from its insurance broker. The court’s decision largely rested on the fact that there was no question that the broker was working on behalf of the defendant to execute settlement agreements. The court noted that it previously held that although a third party, such as insurance broker or outside counsel, may execute settlement agreements, “they nonetheless bind the county as principal, and the agreements are made on its behalf.” Id. at 513. In determining that the defendant had an obligation to obtain responsive records from the insurance broker, the court distinguished Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 38-39 (App. Div. 2005) from the facts before it. The court reasoned that:

In Bent, the requester sought records and information regarding a criminal investigation of his credit card activities conducted jointly by the Stafford Township Police Department [(“STPD”)], the United States Attorney for New Jersey and a special agent of the Internal Revenue Service. As part of his request, Bent sought “discrete records of the 1992 criminal investigation conducted by the STPD,” which were fully disclosed. Id. at 38. Additionally, he sought a “[c]opy of contact memos, chain of custody for items removed or turned over to third parties

of signed Grand Jury reports and recommendations.” Bent v. Stafford Twp. Police Dept., GRC 2004-78, final decision (October 14, 2004). Affirming the determination of the [GRC], we stated: “to the extent Bent's request was for records that either did not exist or were not in the custodian's possession, there was, of necessity, no denial of access at all.” Bent, supra, 381 N.J. Super. at 38 . . . We continued by stating:

“Of course, even if the requested documents did exist, the custodian was under no obligation to search for them beyond the township's files. OPRA applies solely to documents ‘made, maintained or kept on file in the course of [a public agency's] official business,’ as well as any document ‘received in the course of [the agency's] official business.’ N.J.S.A. 47:1A-1.1. Contrary to Bent's assertion, although OPRA mandates that ‘all government records . . . be subject to public access unless exempt,’ the statute itself neither specifies nor directs the type of record that is to be ‘made, maintained or kept on file.’ In fact, in interpreting OPRA's predecessor statute, the Right to Know Law, we found no requirement in the law concerning ‘the making, maintaining or keeping on file the results of an investigation by a law enforcement official or agency into the alleged commission of a criminal offense. . . Thus, even if the requested documents did exist in the files of outside agencies, Bent has made no showing that they were, by law, required to be ‘made, maintained or kept on file’ by the custodian so as to justify any relief or remedy under OPRA. N.J.S.A. 47:1A-1.1.”

[T]he circumstances presented in Bent [are] far removed from those existing in the present matter because, as we have previously concluded, the settlement agreements at issue here were “made” by or on behalf of the Board in the course of its official business. Were we to conclude otherwise, a governmental agency seeking to protect its records from scrutiny could simply delegate their creation to third parties or relinquish possession to such parties, thereby thwarting the policy of transparency that underlies OPRA. N.J.S.A. 47:1A-1.

[Id. at 516-517.]

The Council subsequently expanded the court’s holding in Burnett to agencies entering into a shared services agreement. See Michalak, GRC 2010-220. However, the Council took a different approach where the evidence did not support a custodian’s obligation to obtain records. See Hittinger v. N.J. Transit, GRC Complaint No. 2013-324 (July 2014) (holding that the custodian was not required to obtain contracts from an outside vendor because the vendor maintained sole control over those documents).

Also, it must be noted that NJSP’s ability to patrol within municipal limits is set forth in N.J.S.A. 53:2-1:

The members of the State Police shall be subject to the call of the Governor. They shall be peace officers of the State, *shall primarily be employed in furnishing adequate police protection to the inhabitants of rural sections*, shall give first aid to the injured and succor the helpless, and shall have in general the same powers and authority as are conferred by law upon police officers and constables.

They shall have power to prevent crime, to pursue and apprehend offenders and to obtain legal evidence necessary to insure the conviction of such offenders in the courts. They shall have power to execute any lawful warrant or order of arrest issued against any person, and to make arrests without warrant for violations of the law committed in their presence, and for felonies committed the same as are or may be authorized by law for other peace officers.

[Id. (emphasis added).]

In the matter before the Council, the Complainant sought access to summonses and complaints for DWI/DUI and drug offenses, as well as a Township arrest listing. On the basis that the Township did not have a police department, the Custodian denied access to the OPRA request. This complaint ensued, wherein the Complainant contended that the Custodian had an obligation to obtain and disclose the responsive records under Burnett and Michalak, GRC 2010-220. In the SOI, the Custodian maintained the position that she was under no obligation to obtain and disclose records the Township did not possess and had no authority to compel NJSP to turn over the requested records. In response to the SOI, the Complainant argued that the Custodian had an obligation to contact NJSP or the Township's municipal prosecutor to obtain responsive records.

The crux of this complaint is whether the Custodian had an obligation to contact either NJSP or the Township's municipal prosecutor to obtain records submitted to that agency by NJSP as part of their patrol coverage of the Township. Upon review, the facts of this complaint depart from Burnett and Michalak, GRC 2010-220.

First, in contrast to Michalak, GRC 2010-220, there is no evidence of any contractual or shared services-type agreement between the Township and NJSP. Instead, N.J.S.A. 53:2-1 grants NJSP the ability to patrol certain areas as it deems necessary to ensure adequate police protection. Thus, in the absence of a shared services agreement, there is no evidence supporting that NJSP is making or maintaining summons, complaints, or arrest listings on behalf of the Township. See Burnett, 415 N.J. Super. 506.

Further, the evidence of record does not support that NJSP submitted to the Township's municipal prosecutor copies of those records associated with DWI/DUI or drug issues, or arrests occurring within municipal limits. The Complainant's reliance on the retention schedules to demonstrate that the municipal prosecutor possessed the records is misplaced, as the State's retention schedules do not satisfy the "required by law" standard under OPRA. See N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70, 106-07 (App. Div. 2015), aff'd in relevant part and rev'd in part, 229 N.J. 541, 568 (2017). Instead, the retention schedules determine how records that may be in the agency's possession are to be maintained, and not a legal requirement to make, maintain, or keep on file every identified record. See N. Jersey Media Grp.

Inc., 441 N.J. Super. at 106-07 (applying Shuttleworth v. City of Camden, 258 N.J. Super. 573, 580-81 (App. Div. 1992) to OPRA from the preceding Right to Know Law). Notably, Counsel asserted that the Township provided responsive records to the Complainant after conducting a search at the Court, rather than the municipal prosecutor's office. However, notwithstanding the Township's disclosure, OPRA does not apply to the Judiciary. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-7(g).

Therefore, the relationship between NJSP and the Township is not like the relationships between the parties in Burnett and Michalak. Specifically, the NJSP was neither a third-party vendor for the Township, nor had it entered into a shared services agreement with the Township for its police services. For this reason, the GRC concludes that the Township is in no way involved in making, maintaining, or submitting the records sought here.

Instead, the facts here are more closely aligned with those in Bent, 381 N.J. Super. 30. Specifically, the evidence of record supports that the Township and NJSP are separate public agencies operating within the State. Further, there is no evidence supporting that the Township has any control over NJSP's operations within its municipal limits. Instead, NJSP provides law enforcement to the area and operates within its capacity as provided in N.J.S.A. 53:2-1. Further, that statute does not include any requirement that NJSP provide law enforcement records to a municipality wherein it has assumed full law enforcement duties. For these reasons, the GRC is persuaded that the Custodian was not required to contact other agencies to obtain records that were clearly beyond the Township's own files. Bent, 381 N.J. Super. at 38.

Accordingly, the Custodian was under no obligation to obtain and disclose records created by the NJSP resulting from law enforcement activities within the Township. Bent, 381 N.J. Super. at 38-39; N.J.S.A. 53:2-1. Furthermore, the Custodian was under no obligation to provide responsive records located at the Court, as OPRA does not apply to the Judiciary. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-7(g). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

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, 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 (7th 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 determining whether the Complainant is a prevailing party, the GRC acknowledges that the Custodian provided responsive records subsequently after the complaint filing. Thus, the burden of proving that this complaint was not the catalyst for providing the responsive records to the Complainant shifts to the Custodian pursuant to Mason, 196 N.J. 51.

The Complainant filed the instant complaint requesting that the GRC require the Custodian to obtain and disclose the requested records to him. The Custodian provided responsive records after the complaint filing, and the Complainant asserted that the complaint was therefore the catalyst that secured the desired relief. However, a requestor “is not a prevailing party simply because the agency produced the documents after an OPRA suit was filed.” Spectraserv, Inc. v. Middlesex Cnty. Util. Auth., 416 N.J. Super. 565, 583 (App. Div. 2010).

The evidence of record indicates that the Custodian was under no obligation to obtain and disclose said records from the NJSP, as asserted by the Complainant. Bent, 318 N.J. Super. at 38. Additionally, the responsive records provided by the Custodian were located and obtained from the Court. Because OPRA does not apply to the Judiciary, the Custodian was under no obligation to retrieve the responsive records from the Court. N.J.S.A. 47:1A-7(g). Thus, the GRC finds that the complaint was not the catalyst for the Custodian’s disclosure and that no casual nexus exists. Accordingly, the Complainant is not a prevailing party and is not entitled to an award of a reasonable attorney’s fee.

Therefore, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the Custodian’s conduct. Teeters, 387 N.J. Super. 432. Additionally, no 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 had no obligation to retrieve and disclose the responsive records located at the Court, since OPRA does not apply to the Judiciary. N.J.S.A. 47:1A-7(g). Therefore, the Complainant is not 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.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian was under no obligation to obtain and disclose records created by the New Jersey State Police resulting from law enforcement activities within the Township of Upper. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 38-39 (App. Div. 2005); N.J.S.A. 53:2-1. Furthermore, the Custodian was under no obligation to provide responsive records located at the Upper Township Municipal Court, as OPRA does not apply to the Judiciary. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-7(g). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

2. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the Custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, no 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 had no obligation to retrieve and disclose the responsive records located at the Upper Township Municipal Court, since OPRA does not apply to the Judiciary. N.J.S.A. 47:1A-7(g). Therefore, the Complainant is not 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.

Prepared By: Samuel A. Rosado
Staff Attorney

June 23, 2020