



**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**

**November 9, 2021 Government Records Council Meeting**

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

Complaint No. 2018-233

v.

Township of Pennsville (Salem)  
Custodian of Record

At the November 9, 2021 public meeting, the Government Records Council (“Council”) considered the October 26, 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 should 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 9<sup>th</sup> Day of November 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: November 15, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

*Prevailing Party Attorney's Fees*  
**Supplemental Findings and Recommendations of the Executive Director  
November 9, 2021 Council Meeting**

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

**GRC Complaint No. 2018-233**

v.

**Township of Pennsville (Salem)<sup>2</sup>  
Custodial Agency**

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

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

**Custodian of Record:** Angela Foote  
**Request Received by Custodian:** October 9, 2018  
**Response Made by Custodian:** October 9, 2018  
**GRC Complaint Received:** October 15, 2018

**Background**

September 28, 2021 Council Meeting:

At its September 28, 2021 public meeting, the Council considered the September 21, 2021 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 did not fully comply with the Council’s July 27, 2021 Interim Order. Specifically, although the Custodian provided the Complainant with the responsive

---

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

<sup>2</sup> Represented by Walter J. Ray, Esq. of Masten and Ray (Pennsville, NJ).

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

records within the extended time frame, she failed to timely provide a certified confirmation of compliance to the Executive Director.

2. The Custodian unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Additionally, the Custodian failed to fully comply with the Council's July 27, 2021 Interim Order. However, the Custodian demonstrated that she provided the responsive records to the Complainant in accordance with said 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 July 27, 2021 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 (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 (2008). Specifically, the Custodian was ordered to produce the responsive records maintained by the Township. 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 September 29, 2021, the Council distributed its Interim Order to all parties. On October 1, 2021, the Complainant e-mailed the Government Records Council ("GRC") notifying that the parties have settled the issue of counsel fees.

On October 5, 2021, the Custodian provided a certification to the GRC. The Custodian certified that the parties reached a fee agreement of \$3,000. The Custodian further certified that payment would be approved at the Township of Pennsville's ("Township") meeting on October 7, 2021 and printed on October 8, 2021.

On October 12, 2021, the Custodian e-mailed the GRC, attaching a copy of a check made to the Complainant for \$3,000.00. The Custodian stated that the check was mailed to the Complainant that same day.

## Analysis

### Prevailing Party Attorney's Fees

At its September 28, 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 September 29, 2021, the Council distributed its Interim Order to all parties; thus, the Complainant's response was due by close of business on October 28, 2021. On October 1, 2021, the Complainant e-mailed the GRC, advising that the parties have settled the matter. On October 5, 2021, the Custodian submitted a certification stating that a settlement was reached, and approval was set for October 7, 2021. On October 12, 2021, the Custodian provided the GRC with a copy of the settlement check sent to the Complainant that same day.

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 that the Council should 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

October 26, 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**

**September 28, 2021 Government Records Council Meeting**

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

Complaint No. 2018-233

v.

Township of Pennsville (Salem)  
Custodian of Record

At the September 28, 2021 public meeting, the Government Records Council (“Council”) considered the September 21, 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 did not fully comply with the Council’s July 27, 2021 Interim Order. Specifically, although the Custodian provided the Complainant with the responsive records within the extended time frame, she failed to timely provide a certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Additionally, the Custodian failed to fully comply with the Council’s July 27, 2021 Interim Order. However, the Custodian demonstrated that she provided the responsive records to the Complainant in accordance with said 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 July 27, 2021 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 (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 (2008). Specifically, the Custodian was ordered to produce the responsive records maintained by the Township. 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 28<sup>th</sup> Day of September 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: September 29, 2021**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
September 28, 2021 Council Meeting**

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

**GRC Complaint No. 2018-233**

**v.**

**Township of Pennsville (Salem)<sup>2</sup>  
Custodial Agency**

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

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

**Custodian of Record:** Angela Foote  
**Request Received by Custodian:** October 9, 2018  
**Response Made by Custodian:** October 9, 2018  
**GRC Complaint Received:** October 15, 2018

**Background**

July 27, 2021 Council Meeting:

At its July 27, 2021 public meeting, the Council considered the July 20, 2021 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 may have unlawfully denied access to the Complainant’s October 9, 2018 OPRA request. N.J.S.A. 46:1A-6. Specifically, the Custodian had an obligation to conduct a search for responsive records through Pennsville’s Police Department’s

---

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

<sup>2</sup> Represented by Walter J. Ray, Esq. of Masten and Ray (Pennsville, NJ).

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

access to eCDR. Simmons v. Mercado, \_\_\_ N.J. \_\_\_ (2021). Thus, the Custodian shall perform a search for the responsive complaints and summonses. Should the Custodian not locate such records, she must certify to this fact. Also, should the Custodian determine that a special service charge is warranted thereafter, she must provide the Complainant with the amount of the special service charge required to purchase the requested summonses and complaints.

2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order by disclosing the responsive records with any appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously providing certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>4</sup> to the Executive Director.<sup>5</sup>**
3. **In the event the Custodian determines that a special service charge is applicable, the Custodian shall complete the GRC's 14-point analysis<sup>6</sup> and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council's Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Executive Director certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with R. 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**
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.

---

<sup>4</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>5</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium.

<sup>6</sup> See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>.



### Procedural History:

On July 28, 2021, the Council distributed its Interim Order to all parties. That same day, the Custodian requested an extension of time to respond to the Interim Order. The GRC granted the request that same day, providing the Custodian until August 11, 2021.

On August 6, 2021, the Custodian responded to the Council's Interim Order. The Custodian stated that due to the size of the records, a link to a cloud-based storage website containing the requested records was included in the e-mail. The Custodian provided additional records via links to cloud-based storage websites. On August 10, 2021, the Custodian provided tracking information for records sent via regular mail.

On August 12, 2021, the GRC replied to the Custodian stating that while the GRC received the responsive records, the Custodian was still required to provide certified confirmation of compliance to the Executive Director. On August 16, 2021, the Custodian provided certified confirmation of compliance to the Executive Director. The Custodian certified that she submitted responsive records electronically on August 6, 2021 and via certified mail August 11, 2021.

### Analysis

#### Compliance

At its July 27, 2021 meeting, the Council ordered the Custodian to provide responsive records or to provide an estimated special service charge. 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 July 28, 2021, 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 August 6, 2021.

On July 28, 2021, the date of receipt of the Council's Order, the Custodian requested an extension of time to respond to the Order. The GRC granted the extension until August 11, 2021. On August 6, 2021, the Custodian provided responsive records electronically, and sent additional records via certified mail on August 11, 2021. However, the Custodian did not provide certified confirmation of compliance until August 16, 2021, three (3) business days after the extended deadline. Thus, the Custodian did not fully comply with the Order due to a timeliness issue.

Therefore, the Custodian did not fully comply with the Council's July 27, 2021 Interim Order. Specifically, although the Custodian provided the Complainant with the responsive records within the extended time frame, she failed to timely provide certified confirmation of compliance to the Executive Director.

#### 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 unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Additionally, the Custodian failed to fully comply with the Council’s July 27, 2021 Interim Order. However, the Custodian demonstrated that she provided the responsive records to the Complainant in accordance with said 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 (App. Div. 2006), the Court 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 (2008), the Supreme 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.” Mason, 196 N.J. at 71, (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 stated that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” (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.

[Mason at 73-76 (2008).]

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* (1984).

[Id. at 76.]

Here, the Complainant sought complaints and summonses prepared by the Township of Pennsville (“Township”) pertaining to drug paraphernalia, drug possession, and DUI/DWI offenses. The Custodian asserted that the records were maintained by the municipal court and retrieved through a process separate from OPRA. The Complainant then filed the instant complaint asserting that the Township had access to the requested records.

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 July 27, 2021 Interim Order, the Custodian was ordered to produce the responsive records that were maintained by the Township, 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 July 27, 2021 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 produce the responsive records maintained by the Township. 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 did not fully comply with the Council’s July 27, 2021 Interim Order. Specifically, although the Custodian provided the Complainant with the responsive

---

<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).

records within the extended time frame, she failed to timely provide a certified confirmation of compliance to the Executive Director.

2. The Custodian unlawfully denied access to the Complainant's OPRAs request. N.J.S.A. 47:1A-6. Additionally, the Custodian failed to fully comply with the Council's July 27, 2021 Interim Order. However, the Custodian demonstrated that she provided the responsive records to the Complainant in accordance with said Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRAs 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 OPRAs and unreasonable denial of access under the totality of the circumstances.
3. Pursuant to the Council's July 27, 2021 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 (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 (2008). Specifically, the Custodian was ordered to produce the responsive records maintained by the Township. 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

September 21, 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**

**July 27, 2021 Government Records Council Meeting**

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

Complaint No. 2018-233

v.

Township of Pennsville (Salem)  
Custodian of Record

At the July 27, 2021 public meeting, the Government Records Council (“Council”) considered the July 20, 2021 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 may have unlawfully denied access to the Complainant’s October 9, 2018 OPRA request. N.J.S.A. 46:1A-6. Specifically, the Custodian had an obligation to conduct a search for responsive records through Pennsville’s Police Department’s access to eCDR. Simmons v. Mercado, \_\_\_ N.J. \_\_\_ (2021). Thus, the Custodian shall perform a search for the responsive complaints and summonses. Should the Custodian not locate such records, she must certify to this fact. Also, should the Custodian determine that a special service charge is warranted thereafter, she must provide the Complainant with the amount of the special service charge required to purchase the requested summonses and complaints.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order by disclosing the responsive records with any appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously providing certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**
3. **In the event the Custodian determines that a special service charge is applicable, the Custodian shall complete the GRC’s 14-point analysis<sup>3</sup> and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council’s Interim**

<sup>1</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>2</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium.

<sup>3</sup> See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>.

**Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Executive Director certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with R. 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**

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 27<sup>th</sup> Day of July 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: July 28, 2021**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
July 27, 2021 Council Meeting**

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

**GRC Complaint No. 2018-233**

**v.**

**Township of Pennsville (Salem)<sup>2</sup>  
Custodial Agency**

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

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

**Custodian of Record:** Angela Foote  
**Request Received by Custodian:** October 9, 2018  
**Response Made by Custodian:** October 9, 2018  
**GRC Complaint Received:** October 15, 2018

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

**Request and Response:**

On October 5, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 9, 2018, the Custodian responded in writing, requesting clarification on all three (3) request items. On October 11, 2018, the Complainant provided a copy of New Jersey’s Records Retention and Disposition Schedule for Municipal Police Departments (“retention schedule”) and a sample copy of a complaint and summonses.

---

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

<sup>2</sup> Represented by Walter J. Ray, Esq. of Masten and Ray (Pennsville, NJ).

<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.

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute and Baffi Simmons) v. Township of Pennsville (Salem), 2018-233 – Findings and Recommendations of the Executive Director



On October 11, 2018, the Custodian responded to the Complainant stating that he was seeking court records and were not handled via OPRA. The Custodian stated that the Complainant needed to contact the Court Administrator with the Carneys Point – Pennsville Joint Municipal Court (“Municipal Court”) and submit a request through their office. The Custodian provided the contact information as well as a request form for obtaining court records.

#### Denial of Access Complaint:

On October 15, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contended that the Township of Pennsville (“Township”) unlawfully required him to obtain responsive records from the Municipal Court. The Complainant argued that prior court and GRC case law support that summonses and complaints are disclosable under OPRA. See Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). The Complainant noted that several New Jersey Superior Court Judges have already awarded him prevailing party attorney’s fees based on an agency’s failure to disclose the records at issue, and that other police departments have disclosed same via OPRA request. The Complainant also included an excerpted copy of the retention schedule attached to his clarification e-mail.

The Complainant thus requested that the GRC find that the Custodian violated OPRA. Further, the Complainant requested that the GRC determine that he is a prevailing party subject to an award of attorney’s fees.

#### Statement of Information:

On November 1, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 9, 2018. The Custodian certified that she sought clarification from the Complainant that same day. The Custodian certified that upon forwarding the Complainant’s sample complaint and summons to the Pennsville Police Department (“PPD”), she was told that they did not keep those records and were instead held by the Municipal Court. The Custodian certified that she spoke with the Court Administrator on October 11, 2018 who confirmed what she was told by PPD. The Custodian certified that on October 11, 2018, she responded to the Complainant stating that the records needed to be requested from the Municipal Court.

Regarding request item No. 1, the Custodian asserted that there was a misunderstanding regarding the usage of the term “summonses” when the document is commonly referred to as “tickets” within PPD. The Custodian contended that as a result, PPD provided all summonses responsive to item No. 1 and provided them to the Complainant on November 1, 2018.

Regarding the remaining request items and the request for DUI/DWI complaints, the Custodian maintained that PPD provided those records directly to the Municipal Court, making them court records. The Custodian contended that PPD provided all responsive records they maintained and that the remainder must be sought from the Municipal Court.

#### Additional Submissions:

On November 9, 2018, the Complainant filed a letter brief in opposition to the Custodian's SOI. Therein, the Complainant contended that notwithstanding his clarification to the Custodian, he has yet to receive any responsive records to his OPRA request.

The Complainant first argued that several Superior Court Judges have ruled that summons and complaints prepared by police officers were subject to disclosure and ordered counsel fees as a result. The Complainant asked the GRC to take notice of the decisions in favor of AADARI in O.R. v. Plainsboro Twp., Docket No. MID-L-5752-16, AADARI v. Woodbridge Police Dep't, Docket No. MID-L-2052-18, AADARI v. Mullica Twp., Docket No. ATL-L-1932-18, Simmons v. Gallagher, Docket No. CPM-L-422-18, Simmons v. Manchester Twp., Docket No. OCN-L-1992-18, AADARI v. City of Asbury Park, Docket No. MON-L-2578-18, AADARI v. Atlantic Highlands Police Dep't, Docket No. MON-L-2797-18, and AADARI v. East Greenwich Police Dep't, Docket No. GLO-L-1309-18.

The Complainant next argued that that in accordance with Paff v. Galloway Twp., 229 N.J. 340 (2017), agencies were required to provide access to electronically stored information. The Complainant contended that the Township had access to an "e-ticketing system," and therefore had an obligation to make electronically stored tickets available to the Complainant. Additionally, the Complainant asserted that the Township could access the records from the third-party vendor supplying the e-ticketing system and make the records available to the Complainant. See Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). The Complainant also asserted that PPD officers have access to the Automated Complaint System ("ACS") to enter and generate complaints and could provide the responsive complaints and summonses through that system. See Burnett, 415 N.J. Super. 506; Michalak, GRC 2010-220.

The Complainant argued that police departments in the State were required to retain summonses and complaints until thirty (30) days after disposition of same. M900000, Record Series No. 0082-0000.<sup>5</sup> The Complainant further asserted that municipalities were required to retain these records for at least fifteen (15) years if they are part of a "Municipal Prosecutor's Case File." M170000, Records Series No. 0001-0000. The Complainant argued that because PPD officers and prosecutors were Township employees, their records were subject to access under OPRA and should have been disclosed accordingly. The Complainant further contended that if the records were in storage, OPRA required the Custodian to obtain an extension of time to respond. The Complainant argued that instead of disclosing records, the Custodian denied access and required the Complainant to submit a request with the Court.

The Complainant also contended that the Council has previously found that summonses and complaints were subject to disclosure under OPRA. The Complainant stated that in Merino, GRC 2003-110, the Council held that the custodian was required to disclose responsive summonses that existed in their possession regardless of whether they exceeded their retention period. The Complainant contended that the Council's decision supported the contention that the

---

<sup>5</sup> The Complainant noted his experience was that DUI/DWI or drug possession charges normally included sample testing by the New Jersey State Police. The Complainant alleged that this testing averaged between three (3) and six (6) months.

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute and Baffi Simmons) v. Township of Pennsville (Salem), 2018-233 – Findings and Recommendations of the Executive Director

Township should have disclosed all responsive summonses and complaints it retained. The Complainant further contended that Merino, GRC 2003-110 was consistent with court decisions where defendants argued that a requestor was required to obtain records from the courts. See O.R., Docket No. MID-L-5752-16; Woodbridge Twp., Docket No. MID-L-2052-18. The Complainant further noted that several other municipalities throughout New Jersey have complied recently with identical OPRA requests. The Complainant identified thirty-four (34) such agencies and argued that their actions demonstrated that police departments in the State have access to the requested summonses and complaints.

The Complainant further noted that the Township's obligation to disclose responsive records was not diminished simply because Judiciary also made them available to the public. See Keddie v. Rutgers Univ., 144 N.J. 377 (1996). The Complainant also noted that it was far cheaper to obtain the responsive records via OPRA than through R. 1:38. The Complainant argued that OPRA should not be used as "a money generating scheme (another form of taxation) for government." The Complainant thus argued that the Township should be required to disclose the responsive records.

Lastly, the Complainant provided copies of handouts pertaining to eCDR to demonstrate that police departments and municipal prosecutors can access and print copies of the requested complaints and summonses. Thus, the Complainant renewed his request to order disclosure of the responsive records and that he be awarded prevailing party attorney's fees. See Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006).

On November 14, 2018, the Custodian e-mailed the GRC, providing a copy of correspondence between the Complainant and the Clerk of the Superior Court ("Clerk") dated November 2, 2018. Therein, the Clerk stated that they received the Complainant's request for complaints and summonses, and would be treating the request as being made pursuant to R. 1:38.

On November 15, 2018, the Custodian forwarded another letter to the GRC authored by PPD's Chief of Police. Therein, the Chief stated that all records sought from PPD were provided, and that the remaining request items could only be retrieved from the Municipal Court.

## 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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). In Merino, GRC 2003-110, the custodian argued that the requested complaints and summonses were not subject to access since they were dated beyond the

required retention period via the State's retention schedule. The Council held that if the agency in fact possessed the responsive records, they were subject to access under OPRA even if they were supposed to have been destroyed in accordance with the retention schedule.

Additionally, the New Jersey Supreme Court has held that retention schedules created in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 to -32, did not satisfy the "required by law" standard under OPRA. See N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 568 (2017), aff'g in relevant part and rev'g in part, 441 N.J. Super. 70, 106-07 (App. Div. 2015). The Court found that if the retention schedules carried the force of law, parts of OPRA would be rendered meaningless due to the retention schedules' comprehensive list of records. Id. The Court therefore held that "the retention schedules adopted by the State Records Committee [do not] meet the 'required by law' standard for purposes of OPRA." Id.

Furthermore, although decided during the pendency of this complaint, the GRC finds the Court's holding in Simmons, \_\_\_ N.J. \_\_\_ (2021) relevant and binding. There, the Complainant requested the same records as those at issue in the instant matter, with the custodian asserting that the records were not maintained by the Millville Police Department ("MPD") once its officers created and submitted the records through eCDR. Simmons, \_\_\_ N.J. \_\_\_ (slip op. at 13-14). The Court reversed the Appellate Division and found that the requested records were government records subject to disclosure under OPRA. Id., slip op. at 10. The Court found that notwithstanding which government branch created the CDR-1 and -2 forms, it is the information contained within those forms by MPD officers that is sought by AADARI. Id., slip op. at 26-25. Thus, the Court held that:

Because MPD officers create the completed CDR-1s by populating the forms with the information necessary to generate a summons and submit it to the court, there is no question that the CDR-1s are government records subject to disclosure pursuant to OPRA.

Additionally, the Court rejected MPD's argument that they did not maintain the records, holding that OPRA's definition of a government record is not restricted to records maintained by the agency, but rather includes records it creates, even if not maintained. Id., slip op. at 26-27. Thus, the Court found, "that the Judiciary might maintain on its servers the information that MPD made does not absolve MPD of its obligation to produce that information pursuant to a proper OPRA request made to MPD." Id., slip op. at 29.

In the current matter, the Custodian responded and later certified that PPD did not maintain copies of the requested summonses and complaints and directed the Complainant to request them from the Municipal Court. The Complainant asserted that the retention schedules required police departments and municipal prosecutors to possess copies of the requested records for the stated period. Furthermore, the Complainant asserted that PPD had access to the complaints and/or summonses through eCDR.

Initially, the GRC addresses the Complainant's arguments pertaining to retention schedules. Upon review, the Complainant's reliance on Merino, GRC 2003-110 to contend that LTPD and the Township's municipal prosecutor are required by law to maintain the requested

records based upon the retention schedules ignores the prevailing caselaw. Instead, the retention schedules determine how records that may be in an agency's possession are to be maintained, and are not a legal requirement to make, maintain, or keep on file every identified record. See N. Jersey Media Grp. Inc., 229 N.J. at 568. Therefore, the retention schedules alone do not counter the Custodian's certification that the Township does not possess or maintain the requested records.

However, considering the Court's decision in Simmons, the Custodian maintains the obligation to provide the Complainant with the responsive records available through eCDR. Notwithstanding whether PPD maintained physical copies of same, the Court held that since police departments created the CDR-1s and CDR-2s when inputting information, they were government records even if the records are maintained by the Judiciary's electronic databases. Simmons, \_\_\_ N.J. \_\_\_ (slip op. at 29).

Accordingly, the Custodian may have unlawfully denied access to the Complainant's October 9, 2018 OPRA request. N.J.S.A. 46:1A-6. Specifically, the Custodian had an obligation to conduct a search for responsive records through PPD's access to eCDR. Simmons, \_\_\_ N.J. \_\_\_ (slip op. at 29). Thus, the Custodian shall perform a search for the responsive complaints and summonses. Should the Custodian not locate such records, she must certify to this fact. Also, should the Custodian determine that a special service charge is warranted thereafter, she must provide the Complainant with the amount of the special service charge required to purchase the requested summonses and complaints.

### **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 may have unlawfully denied access to the Complainant's October 9, 2018 OPRA request. N.J.S.A. 46:1A-6. Specifically, the Custodian had an obligation to conduct a search for responsive records through Pennsville's Police Department's access to eCDR. Simmons v. Mercado, \_\_\_ N.J. \_\_\_ (2021). Thus, the Custodian shall perform a search for the responsive complaints and summonses. Should the Custodian not locate such records, she must certify to this fact. Also, should the Custodian determine that a special service charge is warranted thereafter, she must provide the Complainant with the amount of the special service charge required to purchase the requested summonses and complaints.

2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order by disclosing the responsive records with any appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously providing certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>6</sup> to the Executive Director.<sup>7</sup>**
3. **In the event the Custodian determines that a special service charge is applicable, the Custodian shall complete the GRC's 14-point analysis<sup>8</sup> and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council's Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Executive Director certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with R. 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**
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

July 20, 2021

---

<sup>6</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>7</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium.

<sup>8</sup> See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>.

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute and Baffi Simmons) v. Township of Pennsville (Salem), 2018-233 – Findings and Recommendations of the Executive Director