



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**

**March 29, 2022 Government Records Council Meeting**

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

Complaint No. 2019-33

v.

Somerdale Police Department (Camden)  
Custodian of Record

At the March 29, 2022 public meeting, the Government Records Council (“Council”) considered the March 22, 2022 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 Interim Order seeking confirmation of the Complainant’s willingness or refusal to pay the special service charge. Specifically, the Custodian did not submit her certification until three (3) business days after the expiration of the deadline. Notwithstanding, the GRC need not address this issue any further because the Complainant took no action and the Custodian certified to this fact. Thus, per the Council’s Order, the Custodian is under no obligation to disclose the records.
2. Because no denial of access occurred, the Council should decline to address whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.
3. 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, 432 (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 Complainant failed to achieve the relief sought in his Denial of Access Complaint. 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. at 432, and Mason, 196 N.J. at 71.

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 29<sup>th</sup> Day of March 2022

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: March 31, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
March 29, 2022 Council Meeting**

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

**GRC Complaint No. 2019-33**

v.

**Somerdale Police Department (Camden)<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 prepared by your police department from January 2017 through present.
2. Drug possession complaints and summonses prepared by your police department from January 2017 through present.
3. Drug paraphernalia complaints and summonses prepared by your police department from January 2017 through present.

**Custodian of Record:** Michele D. Miller  
**Request Received by Custodian:** November 15, 2018  
**Response Made by Custodian:** December 18, 2018  
**GRC Complaint Received:** February 13, 2019

**Background**

**February 22, 2022 Council Meeting:**

At its February 22, 2022 public meeting, the Council considered the February 15, 2022 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 has borne her burden of proof that the proposed special service charge of \$444.73 comprised of eight (8) hours at an hourly rate of \$55.59 to locate and review 571 cases, and assemble, copy, and redact 95 summonses and complaints is warranted and reasonable here. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super. 191, 202 (Law Div. 2002); Rivera v. Rutgers, The State Univ. of

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

<sup>2</sup> Represented by John Kearney, Esq., of Kearney & Assoc. (Haddon Heights, NJ).

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

N.J., GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

2. **The Complainant shall comply with conclusion No. 1 above within five (5) business days of receipt of such statement by delivering to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase these records. The Complainant's failure to take any action within the allotted five (5) business days shall be construed as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5(b) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within ten (10) business days from receipt of the Council's Interim Order, the Custodian shall deliver<sup>4</sup> to the Executive Director a statement with respect to the Complainant's willingness or refusal to purchase the requested records. The Custodian's response shall be in the form of a legal certification in accordance with N.J. Court Rules, R. 1:4-4.<sup>5</sup>**
3. 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.
4. 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 February 23, 2022, the Council distributed its Interim Order to all parties. On March 14, 2022, the thirteenth (13<sup>th</sup>) business day after receipt, the GRC inquired with the parties as to the status of compliance with the Order.

That same day, the Custodian responded to the GRC and the Council's Order in writing, the Custodian stated that she was on vacation last week and had only returned to the office on March 14, 2022. The Custodian also provided a certification stating that on March 1, 2022, the Borough Solicitor e-mailed the Complainant a statement for \$444.73 for the special service charge. The Custodian also certified that as of March 14, 2022, the Complainant has not responded to the Borough Solicitor. The Complainant subsequently provided the GRC with a copy of the statement sent to the Complainant.

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<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."

## Analysis

### Compliance

At its February 22, 2022 meeting, the Council ordered the Complainant to remit payment of the special service charge or state his rejection to purchase the records. Further, the Council noted that the Complainant's failure to act within five (5) business days would be treated as a rejection of the records. The Council also ordered the Custodian to certify to the Complainant's willingness or refusal to pay the special service charge. The Council provided the Custodian ten (10) business days from receipt of the Council's Interim Order to provide certified confirmation of compliance to the Executive Director, in accordance with N.J. Court Rules, R. 1:4-4.

On February 23, 2022, the Council distributed its Interim Order to all parties. Thus, the Complainant's response was due by close of business on March 2, 2022. Further, the Custodian's response was due by close of business on March 9, 2022.

On March 1, 2022, the Borough Solicitor sent an e-mail to the Complainant requesting payment of the special service charge or a statement rejecting same. On March 14, 2022, the GRC e-mailed the parties requesting a status update on compliance. That same day, the Custodian submitted certified confirmation of compliance to the Executive Director. The Custodian certified that as of March 14, 2022, the Complainant had not responded to the Borough Solicitor either accepting or rejecting the special service charge. Based on the foregoing, 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 Interim Order seeking confirmation of the Complainant's willingness or refusal to pay the special service charge. Specifically, the Custodian did not submit her certification until three (3) business days after the expiration of the deadline. Notwithstanding, the GRC need not address this issue any further because the Complainant took no action and the Custodian certified to this fact. Thus, per the Council's Order, the Custodian is under no obligation to disclose the records.

### Knowing & Willful

Because no denial of access occurred, the Council should decline to address whether the Custodian knowingly and willfully violated OPRA 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 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.]

The Complainant filed the instant complaint asserting that the Custodian improperly imposed a special service charge to locate and retrieve responsive records. However, the evidence of record indicates that the special service charge was warranted and reasonable. Thus, the Complainant has not achieved the desired result and is not a prevailing party in this complaint.

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 Complainant failed to achieve the relief sought in his Denial of Access Complaint. 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 did not fully comply with the Council’s Interim Order seeking confirmation of the Complainant’s willingness or refusal to pay the special service charge. Specifically, the Custodian did not submit her certification until three (3) business days after the expiration of the deadline. Notwithstanding, the GRC need not address this issue any further because the Complainant took no action and the Custodian certified to this fact. Thus, per the Council’s Order, the Custodian is under no obligation to disclose the records.
2. Because no denial of access occurred, the Council should decline to address whether the Custodian knowingly and willfully violated OPRA under the totality of the circumstances.
3. 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, 432 (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 Complainant failed to achieve the

relief sought in his Denial of Access Complaint. 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. at 432, and Mason, 196 N.J. at 71.

Prepared By: Samuel A. Rosado  
Staff Attorney

March 22, 2022





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**

**February 22, 2022 Government Records Council Meeting**

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

Complaint No. 2019-33

v.

Somerdale Police Department (Camden)  
Custodian of Record

At the February 22, 2022 public meeting, the Government Records Council ("Council") considered the February 15, 2022 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 has borne her burden of proof that the proposed special service charge of \$444.73 comprised of eight (8) hours at an hourly rate of \$55.59 to locate and review 571 cases, and assemble, copy, and redact 95 summonses and complaints is warranted and reasonable here. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 202 (Law Div. 2002); Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
2. **The Complainant shall comply with conclusion No. 1 above within five (5) business days of receipt of such statement by delivering to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase these records. The Complainant's failure to take any action within the allotted five (5) business days shall be construed as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5(b) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within ten (10) business days from receipt of the Council's Interim Order, the Custodian shall deliver<sup>1</sup> to the Executive Director a statement with respect to the Complainant's willingness or refusal to purchase the requested records. The Custodian's response shall be in the form of a legal certification in accordance with N.J. Court Rules, R. 1:4-4.<sup>2</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.

<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."

3. 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.
4. 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 22<sup>nd</sup> Day of February 2022

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: February 23, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
February 22, 2022 Council Meeting**

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

**GRC Complaint No. 2019-33**

v.

**Somerdale Police Department (Camden)<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 prepared by your police department from January 2017 through present.
2. Drug possession complaints and summonses prepared by your police department from January 2017 through present.
3. Drug paraphernalia complaints and summonses prepared by your police department from January 2017 through present.

**Custodian of Record:** Michele D. Miller  
**Request Received by Custodian:** November 15, 2018  
**Response Made by Custodian:** December 18, 2018  
**GRC Complaint Received:** February 13, 2019

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

**Request and Response:**

On November 11, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 15, 2018, the Custodian responded in writing requesting an extension of time to respond. The Custodian stated that the request had been forwarded to the Somerdale Police Department’s (“SPD”) Chief of Police, but that fourteen (14) days were needed to respond. On November 16, 2018, the Complainant consented to the extension.

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

<sup>2</sup> Represented by John Kearney, Esq., of Kearney & Assoc. (Haddon Heights, 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) v. Somerdale Police Department (Camden), 2019-33 – Findings and Recommendations of the Executive Director

On November 29, 2018, the Custodian requested another fourteen (14) days to respond to the OPRA request. On November 30, 2018, the Complainant consented to the additional extension.

On December 18, 2018, the Custodian responded to the Complainant, stating that responsive records needed to be hand searched and copied. The Custodian stated also that the process would take one day and cost \$400.00. On December 24, 2018, the Complainant responded to the Custodian, asking whether SPD had access to eCDR. On January 3, 2019, Deputy Chief of Police James Walsh responded to the Complainant stating that SPD had access to eCDR for entry purposes only. On January 27, 2019, the Complainant responded stating that the special service charge was excessive and questioned the claim that SPD's access to eCDR was limited to entry purposes. The Complainant requested that the Custodian reconsider the special service charge.

#### Denial of Access Complaint:

On February 13, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the request was valid in light of Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). The Complainant also argued that the special service charge was unwarranted, asserting that police departments have greater access to eCDR than just for "entry purposes," and could access the requested records electronically. The Complainant requested the GRC compel compliance and to award counsel fees.

#### Statement of Information:

On February 22, 2019, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on November 15, 2018. The Custodian certified that she responded in writing that same day stating that an extension was needed to respond. The Custodian certified that she thereafter notified the Complainant that an additional extension was needed. The Custodian certified that the Complainant consented to both extensions. The Custodian certified that on December 18, 2018, she responded to the Complainant in writing, stating that a special service charge of \$400.00 would be assessed to fulfill the OPRA request.

The Custodian, through Counsel, argued that the Complainant did not justify his doubts on SPD's limited access to eCDR. The Custodian also asserted that the only entity that can access the data within eCDR is the Judiciary via its website. The Custodian also asserted that if the Complainant still desires the records, then a breakdown and justification of the charges would be provided.

#### Additional Submissions:

On February 28, 2019, the Complainant submitted a brief in response to the SOI. The Complainant argued that SPD and the Borough's Municipal Prosecutor have the ability to print complaints, summonses, and warrants from the eCDR system without the help or authorization from a court official. The Complainant included a copy of a handbook entitled "eCDR – Law Enforcement" and a copy of a presentation on eCDR, to demonstrate that the Borough's reason

for imposing a special service charge was inaccurate since the complaints and summonses could be printed electronically at little to no cost.

On March 4, 2019, the Custodian submitted a letter to the GRC, in response to the Complainant. The Custodian asserted that the Complainant's reference to the Municipal Prosecutor's or police officer's ability to print documents off eCDR was irrelevant to the situation at hand. The Custodian contended that the necessity to hand search for the relevant records would exist regardless of whether the Custodian relied on the original documents in the casefile or copies printed via eCDR. The Custodian maintained that the request should have been made to the Judiciary.

On February 2, 2022, the GRC requested a 14-point special service analysis from the Custodian. On February 8, 2022, the Custodian provided the following responses to the 14-point analysis:

**1. What records are requested?**

**Response:**

1. Copies of DWI/DUI complaints that were prepared and filed by the SPD from January of 2017 to the present.
2. Copies of drug possession complaints that were prepared and filed by the SPD from January of 2017 to the present.
3. Copies of SPD's "Arrest Listings" from January 2017 to present.
4. Copies of drug paraphernalia complaints that were prepared and filed by the SPD from January of 2017 to the present.

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

**Response:** Copies of summons, complaints, and arrest records from the SPD.

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

**Response:** January 1, 2017 – December 31, 2017.

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

**Response:** No.

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

**Response:** SPD has 15 sworn police officers and one (1) clerical worker.

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

**Response:** One (1).

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

**Response:** Each record.

**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:** See attached memo from Chief Walsh.

**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:** See attached memo from Chief Walsh.

**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:** See attached memo from Chief Walsh.

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

**Response:** Police Chief is the only employee with complete access to the records and the knowledge as to how the system works.

**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:** Police Chief; \$55.59 per hour.

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

**Response:** Available.

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

**Response:** See attached memo from Chief Walsh.

The Custodian included a memo from Chief Walsh as part of the analysis. Chief Walsh asserted that SPD has access to eCDR for entry purposes for subjects charged with criminal offenses. Chief Walsh asserted that the requested records were instead retrieved from SPD's records management system. Chief Walsh stated that SPD's secretary was not familiar with eCDR's "back-end" functions and did not have administrative access to the records management

system. Chief Walsh asserted that while he was familiar with the administrative functions of eCDR, he had to contact another agency and vendor to determine whether he could retrieve reports containing information responsive to the request items. Chief Walsh stated that the records management system had the ability to retrieve the information but had to be amended and revised to create the reports to satisfy the requestor's OPRA request.

Regarding request item No. 1, Chief Walsh asserted that he had to pull up the "Master Name Index Report" using the relevant time frame and then had to sort through the 510 cases and pull out the DWI complaints requested in item No. 1. Chief Walsh then asserted that he had to go through each case individually, copy sixty-nine (69) summonses, and redact them using Adobe software. Chief Walsh asserted that the task took approximately six (6) hours and fifteen (15) minutes.

Regarding request item Nos. 2 & 4, Chief Walsh asserted that he pulled up the "Incident/CFS Search List" pertaining to narcotics violations using the relevant time frame. Chief Walsh then stated that he sorted through sixty-one (61) cases and pull out the drug possession and drug paraphernalia complaints. Chief Walsh then stated that he had to review each case and copy twenty-six (26) summonses or complaints and redact using Adobe software. Chief Walsh asserted that the task took approximately one (1) hour and forty-five (45) minutes.

Regarding request item No. 3, Chief Walsh asserted that he took a listing of 520 subjects and create a report listing the relevant information requested. Chief Walsh asserted that the task took approximately thirty-five (35) minutes. Chief Walsh asserted that the grand total time expended to fulfill the OPRA request was approximately eight (8) hours at \$55.59 per hour, for a total estimated charge of \$444.73.

### Analysis

#### 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, 360 N.J. Super. at 199. 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.

In Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012), the complainant sought in part motor vehicle recording (“MVR”) footage from the Rutgers University Police Department (“RUPD”). The custodian certified that there was one (1) out of the seventy-five (75) employees qualified to fulfill the complainant’s OPRA request. The employee certified that he expended approximately twelve (12) hours fulfilling the entire request, but RUPD charged only for the two (2) hours spent locating and copying the requested MVR footage on his work computer. The employee also certified that while creating a copy of the footage, he was unable to perform any other work on his computer. The Council held that the disruption to the employee’s regular duties, as well as the fact that RUPD did not charge the entire time expended to fulfill the request, warranted the special service charge.

In the instant matter, the Complainant disputed the originally assessed special service charge of \$400.00. The Complainant asserted that the charge was unwarranted on the basis that the Custodian had greater access to eCDR than claimed. Conversely, the Custodian argued that the charge was warranted because the limited access to eCDR required a manual review of the case files to locate the responsive records. The Custodian also argued that even if SPD had greater access to eCDR, a manual review of the files would still be required to fulfill the request. The Custodian’s 14-point analysis reveals that the Police Chief would be tasked with processing the request, as he was the only employee with full access to SPD’s records management system. The



Custodian also certified that SPD's total personnel was fifteen (15) officers and one (1) clerical worker.

A review of the forgoing supports that SPD's estimated expenditure of eight (8) hours represents an extraordinary time and effort to produce responsive records given the size of the agency and the comparatively high volume of cases Chief Walsh reviewed to obtain the requested records. See Rivera, GRC 2009-311. In particular, the Custodian's 14-point analysis and Chief Walsh's memo detailed the process through which Chief Walsh located, retrieved, and accessed the records. Particularly, Chief Walsh's usage of SPD's records management system which did not have an intuitive method of locating potentially relevant casefiles. Chief Walsh also noted that those located casefiles had to be manually retrieved and their complaints and summonses pulled for copying and redaction. Furthermore, given the agency's size of sixteen (16) employees is a fraction of the RUPD in Rivera, Chief Walsh's expenditure of eight (8) hours comprised an "extraordinary" effort incurred in processing the request. See Courier Post, 360 N.J. Super. at 202. Additionally, the Custodian and Chief Walsh demonstrate that Chief Walsh is the lowest paid employee capable of performing the work, as he has complete access to SPD's records management system.

Accordingly, the Custodian has borne her burden of proof that the proposed special service charge of \$444.73 comprised of eight (8) hours at an hourly rate of \$55.59 to locate and review 571 cases, and assemble, copy, and redact 95 summonses and complaints is warranted and reasonable here. N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. at 202; Rivera, GRC 2009-311. Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

### **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 has borne her burden of proof that the proposed special service charge of \$444.73 comprised of eight (8) hours at an hourly rate of \$55.59 to locate and review 571 cases, and assemble, copy, and redact 95 summonses and complaints is warranted and reasonable here. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 202 (Law Div. 2002); Rivera v. Rutgers, The State Univ. of

N.J., GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

2. **The Complainant shall comply with conclusion No. 1 above within five (5) business days of receipt of such statement by delivering to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase these records. The Complainant's failure to take any action within the allotted five (5) business days shall be construed as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5(b) and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within ten (10) business days from receipt of the Council's Interim Order, the Custodian shall deliver<sup>5</sup> to the Executive Director a statement with respect to the Complainant's willingness or refusal to purchase the requested records. The Custodian's response shall be in the form of a legal certification in accordance with N.J. Court Rules, R. 1:4-4.<sup>6</sup>**
3. 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.
4. 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

February 15, 2022

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<sup>5</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>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."

Rotimi Owoh, Esq., (On Behalf of African American Data & Research Institute) v. Somerdale Police Department (Camden), 2019-33 – Findings and Recommendations of the Executive Director