



State of New Jersey

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

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

November 8, 2023 Government Records Council Meeting

MN and EN (o/b/o AN)
Complainant

Complaint No. 2020-124

v.

Gloucester Township Board of Education (Camden)
Custodian of Record

At the November 8, 2023 public meeting, the Government Records Council (“Council”) considered the October 31, 2023 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 Council issued its Final Decision on August 29, 2023. However, the GRC mistakenly failed to address Complainant’s Counsel’s September 12, 2022 motion for leave to file a reply to Custodian’s Counsel’s objections to the fee application. Thus, in the interests of justice and fairness, the Council should reopen the matter to address Complainant’s Counsel’s motion so that a complete record is established, and all parties are heard. N.J. State Parole Bd. v. Mannson, 220 N.J. Super. 566, 570 (App. Div. 1987); In re Kallen, 92 N.J. 14, 24 (1983).
2. The Council should deny Complainant’s Counsel’s motion for leave to file a reply to Custodian’s Counsel’s objections to the fee application. Complainant’s Counsel’s brief in support failed to raise issues contained within Custodian’s Counsel’s objections warranting a full reply from Complainant’s Counsel. **Thus, the Council’s August 29, 2023 Final Decision remains in full force and effect.**

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 8th Day of November 2023

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 13, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
November 8, 2023 Council Meeting**

**M.N. and E.N. (on Behalf of A.N.)¹
Complainant**

GRC Complaint No. 2020-124

v.

**Gloucester Township Board of Education (Camden)²
Custodial Agency**

Records Relevant to Complaint: Electronic or hard copies of:

May 18, 2020 OPRA Request:

1. Records dated from 7/1/16 to present:
 - a. Financial records of [A.N.]. Financial records consist of contracts, bills, invoices, receipts, ledger accounts, purchase orders, payments, both sides of canceled checks which document payment of services provided to [A.N.] and for payment for services provided to the [Gloucester Township Board of Education (“Board”)] for legal services.
 - b. The special education and education file(s) of [A.N.] such as records kept by staff who provided A.N. special educational or educational services and the files of evaluators of A.N.
 - c. The health records file(s) of [A.N.]
 - d. Communications records pertaining to [A.N.]. Communications records consist of e-mails, memos, text messages, voice mail, and letters. Search terms are:
 - i. Date range; 7/1/16 to present;
 - ii. Sender or recipients: any of the following persons: a person listed in section 2 below or Steven Beech, Michael Gallaway, Linda Gross, Lawrence Laveman or Gregory Alberts; and
 - iii. The body or subject: contains any of the following terms: [A.N.] or [E.N.] or [M.N.]
2. N.J.S.A. 47:1A-10 information: regarding your staff listed below, the following is requested: title, position, salary, payroll record, length of service, data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for employment, date of separation (if any) and the reason.
 - a. Sandrah Hasenbalg
 - b. Carolyn Smith
 - c. Debra Wall
 - d. Jennifer Dyer
 - e. Raylee Aita

¹ Represented by Jamie Epstein, Esq. (Hamilton, NJ).

² Represented by Daniel H. Long, Esq., of Wade, Long, Wood & Long, LLC (Laurel Springs, NJ).

- f. David Hinlicky
- g. Linda Perrine
- h. Rachel Schalette
- i. Lauren Roberts
- j. Dana Brown
- k. Christopher Carosella
- l. Maria Naugle
- m. Tamyra Fernandes
- n. Carolyn Whitworth
- o. Ashley Craven
- p. Trisha Tarsatana
- q. Violet Martin
- r. Lawayne Williams
- s. Lia Dunn
- t. Kristen O'Lexy
- u. Amanda Palma
- v. Chad Leonard
- w. Irene Curran
- x. Erica Wisely
- y. Kevin O'Brien
- z. Claudine Camardo
- aa. Danial McGinley III
- bb. Alexandro Estrada
- cc. Audrey Jean Fitch
- dd. Allisa Adelizzi
- ee. Jean Grubb
- ff. John Bilodeau

May 19, 2020 OPRA Request:

1. Records, with student related personally identifiable information ("PII") redacted, in electronic or paper media, dated from 7/1/16 to present.
 - a. Cost Criteria for Independent Evaluation financial record file(s): Financial records consisting of contracts, bills, invoices, receipts ledger accounts, purchase orders, payments, both sides of canceled checks which document payment for Independent Evaluations paid for by the Board.
 - b. Cost Criteria for Independent Evaluation file(s): which include source documents used to develop the Cost Criteria such as notes, rate or fee schedules, surveys, publications, reports, expert opinions, affidavits, other school board's policies, [New Jersey Department of Education] guidance, etc.
 - c. Cost Criteria for Independent Evaluation file(s): for Board's or Administration's review such as directives, close or open meeting minutes, recorded votes or resolutions.
 - d. Cost Criteria for Independent Evaluation file(s): presented to a tribunal or government entity.
 - e. Cost Criteria for Independent Evaluation file(s): source documents for development of the Education Evaluation rate.

- f. Cost Criteria for Independent Evaluation communications records file(s): Search terms are
- i. Date range: 7/1/16 to present; and
 - ii. Sender or recipients: any of the following persons: a person listed below; and
 - iii. The body or subject: contains any of the following terms, Independent Evaluation or Independent Educational Evaluation or IEE
 1. Sandrah Hasenbalg
 2. Carolyn Smith
 3. Debra Wall
 4. Jennifer Dyer
 5. Raylee Aita
 6. David Hinlicky
 7. Linda Perrine
 8. Rachel Schalette
 9. Lauren Roberts
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 31. Jean Grubb
 32. John Bilodeau
 33. Mary Jo Dintino
 34. Anthony Marks
 35. Mark Gallo
 36. Carolyn Grace
 37. Brian Hammell
 38. Mary Ann Johnson
 39. Jennifer O'Donnell

40. Victoria Smith
41. Elliott Watson

Custodian of Record: Janice Grassia³

Request Received by Custodian: May 18, 2020; May 19, 2020

Response Made by Custodian: June 18, 2020

GRC Complaint Received: June 24, 2020

Background

August 29, 2023 Council Meeting:

At its August 29, 2023 public meeting, the Council considered the August 22, 2023 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. Because the parties failed to reach a fee agreement, and because the Complainant's Counsel subsequently submitted a timely fee application, the Council should determine the reasonable amount of attorney's fees to which the Complainant is entitled.
2. The Council finds that Complainant Counsel's fee application conforms to the requirements of N.J.A.C. 1:105-2.13(b). However, for the reasons set forth above and within the table, the Council finds that the time expended was not reasonable. The Council finds that 18.2 hours at \$500.00 per hour and 1.5 hours at \$200.00 per hour are reasonable for the work performed by Complainant's Counsel instant matter. **Accordingly, the Executive Director recommends that the Council award fees to Complainant's Counsel, in the adjusted amount of \$9,400.00, representing a decrease of 13.1 hours and \$7,000.00 from the originally filed fee application.**
3. No enhancement should be awarded, as Complainant's Counsel failed to demonstrate that the facts of the instant matter warrant same.

Procedural History:

On September 5, 2023, the Council distributed its Final Decision to all parties. That same day, Complainant's Counsel e-mailed the GRC, stating that the Final Decision did not address his motion for leave to file a reply to the Custodian's objections, which he first submitted on September 12, 2022.

³ The Custodian of Record at the time of the request was Jean Grubb.

Analysis

Reopening the Matter

New Jersey courts have long held that administrative agencies are not prohibited from reopening or reconvening an administrative hearing, even if not subject to express legislative authorization. N.J. State Parole Bd. v. Mannson, 220 N.J. Super. 566, 570 (App. Div. 1987) (citing In Re Kallen, 92 N.J. 14, 24 (1983)). The New Jersey Supreme Court held in Kallen that “administrative agencies have the inherent authority to reopen, modify, or rehear even final orders.” 92 N.J. at 24 (footnote omitted).

Here, the Council issued its Final Decision on August 29, 2023. However, the GRC mistakenly failed to address Complainant’s Counsel’s September 12, 2022 motion for leave to file a reply to Custodian’s Counsel’s objections to the fee application. Thus, in the interests of justice and fairness, the Council should reopen the matter to address Complainant’s Counsel’s motion so that a complete record is established, and all parties are heard. Kallen, 92 N.J. at 24; Mannson, 220 N.J. Super. at 570.

Motion for Leave to File Reply to Fee Application Objections

On September 12, 2022, Complainant’s Counsel submitted a motion for leave to file a response to the Custodian’s objections to the fee application. Complainant’s Counsel’s brief relied upon several court cases to assert that complainants have a right to submit replies to oppositions to their fee applications in statutory fee-shifting matters. Seigelstein v. Shrewsbury Motors, Inc., 464 N.J. Super. 393, 406 (App. Div. 2020); Bell v. United Princeton Properties, Inc., 884 F.2d 713, 720 (3d. Cir. 1989); Cunningham v. City of McKeesport, 753 F.2d 262, 267 (3d Cir. 1985); Rode v. Dellarciprete, 892 F.2d 1177, 1188 (3d Cir. 1990). Complainant’s Counsel therefore argued that the GRC should grant his motion.

On September 13, 2022, Custodian’s Counsel submitted a response to Complainant’s Counsel’s motion. Custodian’s Counsel contended that the GRC’s regulations provide no basis permitting Complainant’s Counsel to submit a motion for leave to file a response to their objections. N.J.A.C. 5:105-2.13. Custodian’s Counsel asserted that existing regulations provide the deadlines for Complainant’s Counsel to submit his fee application and for the Custodian to submit her objections. Custodian’s Counsel contended that if there was an intention to allow Complainant’s Counsel to submit a reply brief, the regulations would say so, as do the New Jersey Court Rules, and the Federal Rules of Civil Procedure. Custodian’s Counsel also asserted that to his knowledge, the GRC has never permitted a submission of a reply brief regarding attorney’s fees.

In the instant matter, Complainant’s Counsel’s single-page brief in support failed to provide substantive arguments warranting approval of his motion. Although Complainant’s Counsel’s references note that an attorney may be given an opportunity to respond to objections to his fee application, the brief itself failed to raise issues from Custodian’s Counsel’s objections which warrant further discussion and inquiry. Both parties provided submissions containing substantive arguments on the issue of attorney’s fees for which the GRC was able to decide the

issue without the need for additional information. Thus, the GRC does not find good cause to grant Complainant's Counsel's motion.

Therefore, the Council should deny Complainant's Counsel's motion for leave to file a reply to Custodian's Counsel's objections to the fee application. Complainant's Counsel's brief in support failed to raise issues contained within Custodian's Counsel's objections warranting a full reply from Complainant's Counsel. Thus, the Council's August 29, 2023 Final Decision remains in full force and effect.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Council issued its Final Decision on August 29, 2023. However, the GRC mistakenly failed to address Complainant's Counsel's September 12, 2022 motion for leave to file a reply to Custodian's Counsel's objections to the fee application. Thus, in the interests of justice and fairness, the Council should reopen the matter to address Complainant's Counsel's motion so that a complete record is established, and all parties are heard. N.J. State Parole Bd. v. Mannson, 220 N.J. Super. 566, 570 (App. Div. 1987); In re Kallen, 92 N.J. 14, 24 (1983).
2. The Council should deny Complainant's Counsel's motion for leave to file a reply to Custodian's Counsel's objections to the fee application. Complainant's Counsel's brief in support failed to raise issues contained within Custodian's Counsel's objections warranting a full reply from Complainant's Counsel. **Thus, the Council's August 29, 2023 Final Decision remains in full force and effect.**

Prepared By: Samuel A. Rosado
Staff Attorney

October 31, 2023



State of New Jersey

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

PHILIP D. MURPHY
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SHEILA Y. OLIVER
Lieutenant Governor

KIMBERLY K. HOLMES
Acting Commissioner

FINAL DECISION

August 29, 2023 Government Records Council Meeting

MN and EN (o/b/o AN)
Complainant

Complaint No. 2020-124

v.

Gloucester Township Board of Education (Camden)
Custodian of Record

At the August 29, 2023 public meeting, the Government Records Council (“Council”) considered the August 22, 2023 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. Because the parties failed to reach a fee agreement, and because the Complainant’s Counsel subsequently submitted a timely fee application, the Council should determine the reasonable amount of attorney’s fees to which the Complainant is entitled.
2. The Council finds that Complainant Counsel’s fee application conforms to the requirements of N.J.A.C. 1:105-2.13(b). However, for the reasons set forth above and within the table, the Council finds that the time expended was not reasonable. The Council finds that 18.2 hours at \$500.00 per hour and 1.5 hours at \$200.00 per hour are reasonable for the work performed by Complainant’s Counsel instant matter. **Accordingly, the Executive Director recommends that the Council award fees to Complainant’s Counsel, in the adjusted amount of \$9,400.00, representing a decrease of 13.1 hours and \$7,000.00 from the originally filed fee application.**
3. No enhancement should be awarded, as Complainant’s Counsel failed to demonstrate that the facts of the instant matter warrant same.

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 29th Day of August 2023

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 5, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Prevailing Party Attorney's Fees
**Supplemental Findings and Recommendations of the Executive Director
August 29, 2023 Council Meeting**

**M.N. and E.N. (on Behalf of A.N.)¹
Complainant**

GRC Complaint No. 2020-124

v.

**Gloucester Township Board of Education (Camden)²
Custodial Agency**

Records Relevant to Complaint: Electronic or hard copies of:

May 18, 2020 OPRA Request:

1. Records dated from 7/1/16 to present:
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 - b. The special education and education file(s) of [A.N] such as records kept by staff who provided A.N. special educational or educational services and the files of evaluators of A.N.
 - c. The health records file(s) of [A.N.]
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 - i. Date range; 7/1/16 to present;
 - ii. Sender or recipients: any of the following persons: a person listed in section 2 below or Steven Beech, Michael Gallaway, Linda Gross, Lawrence Laveman or Gregory Alberts; and
 - iii. The body or subject: contains any of the following terms: [A.N.] or [E.N.] or [M.N.]
2. N.J.S.A. 47:1A-10 information: regarding your staff listed below, the following is requested: title, position, salary, payroll record, length of service, data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for employment, date of separation (if any) and the reason.
 - a. Sandrah Hasenbalg
 - b. Carolyn Smith
 - c. Debra Wall
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¹ Represented by Jamie Epstein, Esq. (Hamilton, NJ).

² Represented by Daniel H. Long, Esq., of Wade, Long, Wood & Long, LLC (Laurel Springs, NJ).

- e. Raylee Aita
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- dd. Allisa Adelizzi
- ee. Jean Grubb
- ff. John Bilodeau

May 19, 2020 OPRA Request:

1. Records, with student related personally identifiable information ("PII") redacted, in electronic or paper media, dated from 7/1/16 to present.
 - a. Cost Criteria for Independent Evaluation financial record file(s): Financial records consisting of contracts, bills, invoices, receipts ledger accounts, purchase orders, payments, both sides of canceled checks which document payment for Independent Evaluations paid for by the Board.
 - b. Cost Criteria for Independent Evaluation file(s): which include source documents used to develop the Cost Criteria such as notes, rate or fee schedules, surveys, publications, reports, expert opinions, affidavits, other school board's policies, [New Jersey Department of Education] guidance, etc.
 - c. Cost Criteria for Independent Evaluation file(s): for Board's or Administration's review such as directives, close or open meeting minutes, recorded votes or resolutions.
 - d. Cost Criteria for Independent Evaluation file(s): presented to a tribunal or government entity.

- e. Cost Criteria for Independent Evaluation file(s): source documents for development of the Education Evaluation rate.
- f. Cost Criteria for Independent Evaluation communications records file(s): Search terms are
 - i. Date range: 7/1/16 to present; and
 - ii. Sender or recipients: any of the following persons: a person listed below; and
 - iii. The body or subject: contains any of the following terms, Independent Evaluation or Independent Educational Evaluation or IEE
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 - 28. Alexandro Estrada
 - 29. Audrey Jean Fitch
 - 30. Allisa Adelizzi
 - 31. Jean Grubb
 - 32. John Bilodeau
 - 33. Mary Jo Dintino
 - 34. Anthony Marks
 - 35. Mark Gallo
 - 36. Carolyn Grace
 - 37. Brian Hammell

38. Mary Ann Johnson
39. Jennifer O'Donnell
40. Victoria Smith
41. Elliott Watson

Custodian of Record: Janice Grassia³

Request Received by Custodian: May 18, 2020; May 19, 2020

Response Made by Custodian: June 18, 2020

GRC Complaint Received: June 24, 2020

Background

July 26, 2022 Council Meeting:

At its July 26, 2022 public meeting, the Council considered the July 19, 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, found that:

1. The Custodian did not fully comply with the Council's June 28, 2022 Interim Order because she failed to respond within the prescribed time frame and simultaneously provide certified confirmation of compliance to the Executive Director.
2. The original Custodian violated N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i) by providing responsive records untimely. The original Custodian also unlawfully denied access to a portion of the Complainants' May 18, and May 19 2020 OPRA request seeking communications records. However, the original Custodian ultimately provided those responsive records in October 2020, and the Custodian certified that all responsive records have been provided to the Complainants. Further, the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original 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 June 28, 2022 Interim Order, the Complainants have achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainants' 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 original Custodian provided records responsive to request items she initially denied access after the complaint filing. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainants are a prevailing

³ The Custodian of Record at the time of the request was Jean Grubb.

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. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainants 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, Complainants' Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Procedural History:

On July 26, 2022, the Council distributed its Interim Order to all parties. On August 1, 2022, the Complainant's Counsel submitted a fee application. The fee application, appendix, and included brief ("Epstein Brief") set forth the following:

1. The complaint and number: M.N. and E.N. (on behalf of A.N.) v. Gloucester Twp. Bd. of Educ. (Camden), GRC Complaint No. 2020-124.
2. Complainant's Counsel's law firm affiliation: Counsel is a sole practitioner.
3. A statement of client representation: Counsel certified to his services, including communicating with the Complainant, GRC, and Custodian's Counsel; discussing submissions with the Complainant; reviewing of e-mail correspondence to and/or from the parties; and participating in the prevailing party fee settlement/application process.
4. The hourly rate of all attorneys and support staff involved in the complaint: Counsel, the sole professional who worked on the file, certified that he charged \$500 per hour.
5. Copies of time sheets for each professional involved in the complaint. Counsel supplied a copy of his billing sheets from May 18, 2020 through August 16, 2022 (the "Fee Period"). During the Fee Period, Counsel billed a total of 32.80 hours for a total hourly fee of \$16,400.00. Counsel also requested a lodestar enhancement of 50% or \$8,200.00, for a total award of \$24,600.00.
6. Evidence that the rates charged are in accordance with prevailing rates in the relevant community, including years of experience, skill level and reputation: Counsel certified to his education and fifteen (15) years of legal experience and representation of clients in OPRA cases pertaining to education and special education matters. Counsel certified that he was previously awarded \$400 per hour in 2012 (citing T.B. v. Mt. Laurel Bd. of Educ., 2012 U.S. Dist. LEXIS 44848, *9-15 (D.N.J. Mar. 30, 2012); G.J. v. Lower Merion Sch. Dist., 2012 U.S. Dist. LEXIS 84674 (E.D. PA., 2012). Counsel requested that this rate be increased to \$500.00 because his litigation experience in student and civil rights cases has since increased. Counsel also noted that in 2015 his requested hourly rate of \$550.00 was approved in J.R. v. N.J. Dep't of Educ., 1:11-cv-05060, as well as a \$500.00 hourly rate in F.P. v. Tabernacle Bd. of Educ., EDS 06022-15. Counsel also included certifications from fellow practitioners of similar experience attesting to Counsel's hourly rate. See Holland Cert., Giles Cert., and Luers Cert.

7. Detailed documentation of expenses: Counsel did not seek reimbursements for expenses.

On August 29, 2022, the Custodian's Counsel submitted objections to the fee application. Counsel initially argued that Complainant's Counsel should not be entitled to any legal fees in the matter. Counsel asserted that in Greico v. Borough of Haddon Heights, 449 N.J. Super. 513, 521 (Law Div. 2015), the court held that when an agency realizes an error in responding to an OPRA request and moves to correct the issue, it would be contrary to the Supreme Court's rationale in Mason to award attorney's fees against the agency. Counsel asserted that to do so would incentivize requestors to keep silent when custodians commit unintentional errors, and likewise discourage agencies from voluntarily providing any documents to requestors after filing suit. Greico, 449 N.J. Super. at 521-22. Counsel argued that in the instant matter, the Custodian fully complied with the OPRA after mediation proceedings and provided responsive records on October 5, 2020 and October 9, 2020. Counsel argued that the GRC did not order production of the records since they had since been released eighteen (18) months prior to adjudication.

Custodian's Counsel further asserted that under N.J.A.C. 5:105-2.13(a), attorney's fees are provided only when a complaint is filed, access was improperly denied, and the requested records are disclosed pursuant to a determination of the Council. Counsel contended that in the present case, the Custodian provided the records voluntarily before there was any determination from the Council, and therefore the requirements to be a prevailing party have not been met.

Regarding the fees themselves, Custodian's Counsel argued that the Council previously awarded an hourly rate of \$450.00, while noting that the attorney had "vast experience" in cases before the courts and the GRC. Kotler v. Town of Morristown (Morris), GRC Complaint No. 2019-99 (July 2021). Counsel contended that the Council has not awarded an hourly rate to Complainant's Counsel in previous matters, and therefore should not award a rate higher than in Kotler.

Custodian's Counsel further contended that Complainant's Counsel's billing and recordkeeping practices have previously been found to be "inadequate and unprofessional" by several courts. See A.S. v. Harrison Twp. Bd. of Educ., Case No. 1:14-cv-147-NLH-KMW (D.N.J. 2017). Counsel asserted that the court criticized Complainant's Counsel's "block billing", and charging every e-mail at the attorney's hourly rate, rather than a clerical or paralegal rate. Ibid. Counsel asserted that here, the provided time sheets included nine (9) items which occurred prior to filing the instant complaint, including filing the OPRA requests themselves. Counsel also argued that several entries lacked sufficient detail to adequately document the large blocks of time they represented, and other entries were clerical or administrative tasks such as e-mail correspondence. Counsel therefore argues that such entries warrant substantial reduction.

Custodian Counsel next contended that Complainant's Counsel was not entitled to an enhancement. Counsel contended that the typical facts of an OPRA matter would not warrant a lodestar enhancement, citing New Jerseyans for a Death Penalty Moratorium v. N.J. Dep't of Corr., 185 N.J. 137, 157 (2005). Counsel argued that in the instant matter, the Council already held that the Custodian did not knowingly or willfully violate OPRA, and that all responsive records were provided to the Complainant by October 9, 2020. Counsel contended that the facts of the instant matter are those of a typical OPRA claim that does not justify any enhancement.

Analysis

Compliance

At its July 26, 2022 meeting, the Council ordered the parties to “confer in an effort to decide the amount of reasonable attorney’s fees” and notify the GRC of any fee agreement. Further, the Council ordered that, should the parties not reach an agreement, the Complainant’s Counsel “shall submit a fee application . . . in accordance with N.J.A.C. 5:105-2.13.” On July 27, 2022, the Council distributed its Interim Order to all parties, providing the parties twenty (20) business days to reach a fee agreement. Thus, the parties were required to notify the GRC of any agreement by August 23, 2022.

On August 16, 2022, the fourteenth (14th) business day after receipt of the Council’s Order, the Complainant’s Counsel submitted his fee application. On August 29, 2022, nine (9) business days after receipt, Custodian’s Counsel submitted his opposition to the fee application.

Therefore, because the parties failed to reach a fee agreement, and because the Complainant’s Counsel subsequently submitted a timely fee application, the Council should determine the reasonable amount of attorney’s fees to which the Complainant is entitled.

Prevailing Party Attorney Fee Award

“Under the American Rule, adhered to by the . . . courts of this state, the prevailing litigant is ordinarily not entitled to collect a reasonable attorney’s fee from the loser.” Rendine v. Pantzer, 141 N.J. 292, 322 (1995) (internal quotation marks omitted). However, this principle is not without exception. NJMDP, 185 N.J. at 152. Some statutes, such as OPRA, incorporate a “fee-shifting measure: to ensure ‘that plaintiffs with bona fide claims are able to find lawyers to represent them[,] . . . to attract competent counsel in cases involving statutory rights, . . . and to ensure justice for all citizens.’” Id. at 153 (quoting Coleman v. Fiore Bros., 113 N.J. 594, 598, (1989)).

OPRA provides that “government records shall be readily accessible for inspection, copying, or examination by the citizens of this State.” Id. at 152 (citing N.J.S.A. 47:1A-1). OPRA further 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. See generally NJDPM, 185 N.J. at 137 (“By making the custodian of the government record responsible for the payment of counsel fees to a prevailing requestor, the Legislature intended to even the fight.” Id. at 153. (quoting Courier News v. Hunterdon Cnty. Prosecutor’s Office, 378 N.J. Super. 539, 546 (App. Div. 2005)).

In the instant matter, the Council found the Complainant achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the [C]ustodian’s conduct.” Teeters, 387 N.J. Super. at 432. Further, the Council found 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. at 73. Accordingly, the Council ruled that the Complainant was a prevailing party, who is entitled to an award of a reasonable attorney’s fee, and ordered the parties to cooperate in an effort to reach an agreement on fees. Absent the parties’ ability to reach an agreement, the Council provided the Complainant’s Counsel an opportunity to file an application for fees.

A. Standards for Fee Award

The starting “‘point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate,’ a calculation known as the lodestar.” Rendine, 141 N.J. at 324 (quoting Hensley v. Eckerhart, 461 U.S. 424, 434 (1983)). Hours, however, are not reasonably expended if they are excessive, redundant, or otherwise unnecessary. Hensley, 461 U.S. at 434. When determining the reasonableness of the hourly rate charged, the GRC should consider rates for similar services by lawyers of reasonably comparable experience, skill, and reputation in the same geographical area. Walker v. Giuffre, 415 N.J. Super. 597, 606 (App. Div. 2010) (quoting Rendine, 141 N.J. at 337). However, the fee-shifting statutes do not contemplate payment for the learning experience of attorneys for the prevailing party. HIP (Heightened Independence and Progress, Inc.) v. K. Hovnanian at Mahwah VI, Inc., 291 N.J. Super. 144, 160 (citing Council Entm’t, Inc. v. Atlantic City, 200 N.J. Super. 431, 441-42 (Law Div. 1984)).

Additionally, the NJDPM Court cautioned that “unusual circumstances may occasionally justify an upward adjustment of the lodestar” but further cautioned that “[o]rdinarily[] the facts of an OPRA case will not warrant an enhancement of the lodestar amount because the economic risk in securing access to a particular government record will be minimal. For example, in a ‘garden variety’ OPRA matter . . . enhancement will likely be inappropriate.” Id. at 157. OPRA neither mandates nor prohibits enhancements. NJDPM, 185 N.J. at 157. However, “[b]ecause enhancements are not preordained . . . [they] should not be made as a matter of course.” Ibid. The loadstar enhancement may be adjusted, either upward or downward, depending on the degree of success achieved. Id. at 153-55. “[T]he critical factor in adjusting the lodestar is the degree of success obtained.” Id. at 154 (quoting Silva v. Autos of Amboy, Inc., 267 N.J. Super. 546, 556 (App. Div. 1993) (quoting Hensley, 461 U.S. at 435)). If “a plaintiff has achieved only partial or limited success . . . the product of hours reasonably expended on the litigation . . . times a reasonable hourly rate may be an excessive amount.” NJDPM, 185 N.J. at 153 (quoting Szczepanski v. Newcomb Med. Ctr., 141 N.J. 346, 355 (1995) (internal quotation marks omitted)). Conversely, “[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.” NJDPM, 185 N.J. at 154 (quoting Hensley, 461 U.S. at 435).

Moreover, in all cases, an attorney’s fee must be reasonable when interpreted in light of the Rules of Professional Conduct. For instance, in Rivera v. Bergen Cnty. Prosecutor’s Office, 2012 N.J. Super. Unpub. LEXIS 2752 (December 11, 2012) (citing Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21-22 (2004)), the trial court stated that:

To verify the reasonableness of a fee, courts must address: 1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; 3) the fee customarily charged in the locality for similar legal services; 4) the amount involved and the results obtained; 5) the time limitations imposed by the client or by the circumstances; 6) the nature and length of the professional relationship with the client; 7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and 8) whether the fee is fixed or contingent.

[Rivera, 2012 N.J. Super. Unpub. LEXIS 2752, at 11 (applying R.P.C. 1.5(a)).]

In addition, N.J.A.C. 5:105-2.13 sets forth the information that counsel must provide in his or her application seeking fees in an OPRA matter. Providing the requisite information required by its regulations permits the Council to analyze the reasonableness of the requested fee.

Finally, the Court has noted that “[i]n fixing fees against a governmental entity, the judge must appreciate . . . that ‘the cost is ultimately borne by the public’ and that ‘the Legislature . . . intended that the fees awarded serve the public interest as it pertains to those individuals who require redress in the context of a recognition that limited public funds are available for such purposes.’” HIP, 291 N.J. Super. at 167 (quoting Furey v. Cnty. of Ocean, 287 N.J. Super. 42, 46 (App. Div. 1996)).

B. Evaluation of Fee Application

1. Lodestar Analysis

a. Hourly Rate

In the instant matter, Complainant’s Counsel is seeking a fee award of \$16,400.00, representing 32.8 hours at \$500.00 per hour. In support of this hourly rate, Counsel certified to his years of experience representing special education students generally in state and federal court, in addition to representing such clients in several OPRA matters. Counsel noted that courts have awarded him hourly rates of \$550 and \$500, attesting to his experience in the area along with providing his services on a contingency basis. Epstein Brief at 6-7. Moreover, Counsel included certifications from several practitioners with similar experience in special education and/or OPRA litigation, attesting to the reasonableness of the rate based upon his experience in representing special education clients. See Holland Cert., Giles Cert., and Luers Cert. Custodian’s Counsel objects to the hourly rate, contending the Council should not award a rate greater than \$450.00, as Complainant’s Counsel did not cite a previously provided award by the Council.

Based on the foregoing, the rate of \$500.00 is reasonable for a practitioner with Counsel’s experience and skill level in this geographical area, given his general litigation experience, and his experience in OPRA matters pertaining to special education clients. Further, Counsel noted in the legend section of his time sheets that his paralegal is compensated at an hourly rate of \$200.00.

Thus, if entries are deemed to be revised downward to reflect administrative or clerical tasks, the hours billed shall be recalculated to reflect the paralegal's rate.

b. Time Expended

In support of his request for fees, Complainant's Counsel submitted a log of his time. For the period from May 18, 2020 through August 16, 2022, Counsel billed a total of 32.8 hours for work on the file. This included reading and exchanging e-mails with the parties, reviewing submissions, filing the complaint, and composing the fee application.

In accordance with the mandates of N.J.A.C. 105-2.13(b), Counsel's time sheet provided basic descriptions of the work performed in the required tenths of an hour. N.J.A.C. 105-2.13(b)(5). The single-line entries identify generic actions such as "DRAFT LETTER TO ATTY," "3 E-MAILS JE<>GRC," and "1ST DRAFT FEE MOTION."

Custodian's Counsel strongly opposed the fee application, initially noting that the first nine (9) entries pertained to matters occurring prior to the filing of the instant complaint. Counsel further argued that the entries for June 17, 2020, June 20, 2020, August 15, 2022, and August 16, 2022 comprise block bills that provide very little detail as to what work was performed. Counsel further argued that most of the e-mail entries should not be charged at the attorney rate. Counsel also noted the June 28, 2022 entry for "PREPARE; REVIEW FILE; ATTEND GRC MEETING" when the GRC does not require the parties to attend, does not take testimony, and determines matters solely on written submissions. Counsel also disputed the 2.6 hours billed for "REVIEW CUSTODIAN JGR LETTER W/RECORDS" when the responsive records were already provided.

The review of an application for fees, by necessity, must be conducted on a case-by-case basis. The Council finds that Complainant's Counsel's fee application conforms to the requirements of N.J.A.C. 1:105-2.13(b) and provides the Council with enough detailed information from which to conduct its analysis.

The GRC finds that the accounting of charges is not acceptable. Initially, some of the e-mail entries comprise multiple e-mails between Complainant's Counsel and other parties. Furthermore, because each entry is a single line, regardless of the work performed or hours billed, it is difficult to discern whether the e-mail entries required the work of an attorney or could have been done by clerk or paralegal. Like the court's review of Counsel's billing records in A.S., it is "highly implausible" that nearly every e-mail required 0.1 hours and legal training to review. Other courts have stated to Counsel that he "must perform such routine tasks more efficiently or delegate such work to either a junior lawyer, paralegal or other member of Mr. Epstein's support staff." Ibid., citing Deptford Twp. Sch. Dist. v. H.B., 2006 U.S. Dist. LEXIS 92456 *17-19 (D.N.J. 2006). Accordingly, those entries that do not appear to require legal training are to be recalculated using Counsel's paralegal's hourly rate of \$200.00.

Furthermore, several of the entries appear to be impermissible block billing, with Complainant's Counsel combining tasks such as drafting, reviewing, research, and conferring with clients into a single, one line entry. Courts have previously informed Counsel that it is "justified [to reduce] the reasonable number of hours if the attorney's time records are sloppy and imprecise

and fail to document adequately how he or she utilized large blocks of time.” L.J. v. Audubon Bd. of Educ., 2009 U.S. Dist. LEXIS 31473 at *54-55 (D.N.J. 2009).

The GRC conducted a review of the application. The recommendations of the Executive Director following that review are set forth in the following table:

Entry Number & Date (Entry number begin at 2)	Description of Service	Time Expended (in tenths of an hour)/ and Amount Billed at \$500/hour in dollars		Findings from Fee Application Review	Adjusted Entry: Time allowed and total Amount at \$500.00/hour	
2 5/18/2020	DRAFT OPRA REQUESTS	0.5	\$250.00		0.5	\$250.00
3 5/19/2020	4 E-MAILS DL<>JE	0.2	\$100.00		0.2	\$100.00
4 5/21/2020	DRAFT LETTER TO ATTY	0.5	\$250.00		0.5	\$250.00
5 6/1/2020	DRAFT LETTER TO ATTY	0.2	\$100.00		0.2	\$100.00
6 6/1/2020	1 E-MAIL JE<DL	0.2	\$100.00		0.2	\$100.00
7 6/4/2020	DRAFT LETTER TO ATTY; ETC	0.3	\$150.00		0.3	\$150.00
8 6/4/2020	1 E-MAIL JE<DL	0.2	\$100.00		0.2	\$100.00
9 6/12/2020	DRAFT LETTER TO ATTY; REVIEW FILE; CONFER W/ CLIENTS, ETC.	0.8	\$400.00		0.8	\$400.00
10 6/12/2020	1 E-MAIL JE<DL	0.2	\$100.00		0.2	\$100.00
11 6/17/2020	DRAFT OPRA BRIEF; REVIEW FILE; RESEARCH; CONFER W/ CLIENT	4.9	\$2,450.00	The Denial of Access Complaint is comprised of the four (4) page form, the three (3) page form for mediation, and a thirty-eight (38) page brief. As an experienced practitioner before the GRC, the time expended drafting and finalizing the complaint is unreasonable. Further, the entries comprise block billing, with multiple tasks combined into two (2) entries, and leaving vague the actual details of the work performed.	2.0	\$1,000.00
12 6/20/2020	FINAL DRAFT OPRA COMPLAINT, BRIEF, CERT, APX, ETC.	5.2	\$2,600.00		3.0	\$1,500.00

13 6/20/2020	REVIEW GRC LETTER	0.3	\$150.00	There is no evidence in the record of a letter from the GRC to Counsel on this matter dated 6/20/2020. Thus, the time expended is unwarranted.	0.0	\$0.00
14	3 E-MAILS JE <> GRC	0.2	\$100.00	<p>The GRC finds that the within time entry denotes administrative work— filing of the complaint. The GRC finds that the within time entry denotes administrative work— filing of the complaint. The GRC is cognizant that with the advent of advanced electronics, computers and e-filing, attorneys often work alone and/or perform tasks traditionally executed by support staff.</p> <p>Notwithstanding, an attorney may not be compensated at his or her standard hourly rate for counsel for tasks which could be performed by administrative and para-professional staff. The GRC finds that this task should be billed at a paraprofessional or administrative rate. The record indicates that the Counsel’s paralegal charges an hourly rate of \$200.00.</p> <p>Moreover, the subsequent e-mails pertain to Counsel needing to refile the complaint to include the Denial of Access Complaint form. The GRC finds that the costs associated with deficiencies in submissions should be borne by Counsel. See <u>Carter v. Franklin Fire Dist. No. 2 (Somerset)</u>, GRC Complaint No. 2011-262 (March 2014).</p>	0.1	\$20.00 (\$200.00/hour)

15 7/7/2020	1 E-MAIL JE<>GRC	0.1	\$50.00	The GRC finds that the within entries denote administrative work—requesting status updates on the complaint, and reviewing e-mails and correspondence addressed to the Custodian. Therefore, these entries should be charged at the paralegal’s hourly rate.	0.1	\$20.00 (\$200.00/hour)
16 7/8/2020	REVIEW GRC LETTER TO CUSTODIAN	0.2	\$100.00		0.2	\$40.00 (\$200.00/hour)
17 7/8/2020	1 E-MAIL JE<GRC	0.1	\$50.00		0.1	\$20.00 (\$200.00/hour)
18 7/8/2020	2 E-MAILS BG<>JE	0.1	\$50.00		0.1	\$20.00 (\$200.00/hour)
19 07/15/2020	REVIEW/EXECUTE AGREEMENT TO MEDIATE	0.2	\$100.00		0.2	\$40.00 (\$200.00/hour)
20 07/17/2020	DRAFT SOI LETTER TO GRC	0.2	\$100.00		0.2	\$100.00
21 7/21/2020	3 E-MAILS JE<BG	0.2	\$100.00	The GRC finds that the e-mails denote administrative work—requesting status updates on the complaint. Therefore, these entries should be charged at the paralegal’s hourly rate.	0.2	\$40.00 (\$200.00/hour)
22 7/28/2020	REVIEW MEDIATION NOTICE	0.2	\$100.00	The GRC finds that the e-mail and notice denote administrative work—informing Counsel that the matter is being transferred to mediation. Therefore, these entries should be charged at the paralegal’s hourly rate.	0.1	\$20.00 (\$200.00/hour)
23 7/28/2020	E-MAIL BG<JE	0.1	\$50.00		0.1	\$20.00 (\$200.00/hour)
24 7/28/2020	6 E-MAILS JE<>JS<>DL	0.3	\$150.00		0.3	\$150.00
25 8/6/2020	REVIEW MEDIATION NOTICE	0.1	\$50.00		0.1	\$50.00
26 9/24/2020	PREPARE; ATTEND MEDIATION CONFERENCE CALL	2.5	\$1,250.00		2.5	\$1,250.00
27 9/25/2020	E-MAIL JE<DL	0.1	\$50.00		0.1	\$50.00
28 10/5/2020	REVIEW CUSTODIAN CL	0.1	\$50.00		0.1	\$50.00
29 10/6/2020	3 E-MAILS MN<>JE	0.2	\$100.00		0.2	\$100.00
30 10/14/2020	3 E-MAILS JE<>DL<>JG; REVIEW BOE RESPONSE RECORD	0.2	\$100.00		0.2	\$100.00
31 10/21/2020	5 E-MAILS JE<>DL<>JS	0.2	\$100.00		0.2	\$100.00

32 10/22/2020	REVIEW GRC MEDIATION DISPOSITION REPORT	0.2	\$100.00	The disposition report is a single page with a simple checklist as to what were the results of mediation. The time expended to review is unreasonable.	0.1	\$50.00
33 10/30/2020	REVIEW SOI	0.6	\$300.00		0.3	\$300.00
34 10/30/2020	REVIEW E-MAILS SR<>JGR; REVIEW BOE RESPONSE FILES	0.3	\$150.00		0.5	\$150.00
35 7/6/2021	2 E-MAILS JE<>JS	0.1	\$50.00	The GRC finds that the within entries denote administrative work—requesting status updates on the complaint, and notifying the parties that the matter has been scheduled for adjudication. Therefore, these entries should be charged at the paralegal’s hourly rate.	0.1	\$20.00 (\$200.00/hour)
36 8/17/2021	2 E-MAILS JE<>SR	0.1	\$50.00		0.1	\$20.00 (\$200.00/hour)
37 6/21/2022	REVIEW SR E-MAIL	0.1	\$50.00		0.1	\$20.00 (\$200.00/hour)
38 6/28/2022	PREPARE; REVIEW FILE; ATTEND GRC MEETING	0.5	\$250.00	The Council adjudicates matters on the written submissions of the parties, no testimony on pending matters is permitted, and attendance is voluntarily. Therefore, the time expended here is unreasonable.	0.1	\$50.00
39 6/29/2022	REVIEW GRC ORDERS & LETTER FROM GRC	1.1	\$550.00	The orders and letters from the GRC are eleven (11) pages in total. Review of same does not warrant 1.1 hours expended by an experienced practitioner.	0.1	\$50.00
40 7/21/2022	REVIEW CUSTODIAN JGR LETTER W/ RECORDS	2.6	\$1,300.00	Counsel gives no basis for why already-provided records needed additional review. Thus, the time expended here is unwarranted.	0.0	\$0.00
41 7/27/2022	REVIEW ORDERS	0.3	\$150.00	Counsel gives no basis for why orders needed additional review. Thus, the time expended here is unwarranted.	0.0	\$0.00
42 7/27/2022	E-MAIL JE<DL	0.1	\$50.00		0.1	\$50.00
43 8/15/2022	1ST DRAFT FEE MOTION	4.2	\$2,100.00	The GRC does not find that 8.0 hours taken to	3.0	\$1,500.00

44 8/16/2022	FINAL DRAFT FEE MOTION	3.8	\$1,900.00	draft and complete a fee application is warranted by an experienced practitioner.	2.0	\$1,000.00
Total:		32.8	\$16,400.00		19.7	\$9,400.00 (\$500x18.2 + \$200x1.5)

In sum, the GRC conducted a review of the application and billing record and found that the time spent on the file exceeds what would be reasonable for an OPRA practitioner of Complainant’s Counsel’s experience. For example, some of Counsel’s charges reflect administrative work not reasonably performed at a rate of \$500.00 per hour. Thus, those entries have been recalculated using Counsel’s paralegal rate of \$200.00 per hour. Additionally, Counsel charged more than 10.0 hours to draft and submit the instant complaint, and 8.0 hours to submit a fee application, both of which are not warranted for an experienced practitioner commanding an hourly rate of \$500.00. Thus, the GRC reduces the total fee application charge from 32.8 hours at \$500.00 per hour, to 18.2 hours at \$500.00 per hour and 1.5 hours at \$200.00 per hour, which represents a reduction of 13.1 hours.

Accordingly, the Council finds that 18.2 hours at \$500.00 per hour and 1.5 hours at \$200.00 per hour are reasonable for the work performed in the instant matter. **Accordingly, the Executive Director recommends that the Council award fees to Complainant’s Counsel in the adjusted amount of \$9,400.00, representing a decrease of 13.1 hours and \$7,000.00 from the originally filed fee application.**

2. Enhancement Analysis

The Court has held that fees may be enhanced “to reflect the risk of nonpayment in all cases in which the attorney’s compensation entirely or substantially is contingent on a successful outcome.” Rendine, 141 N.J. at 337. In such cases, the Court held that “a court’s job will be to determine whether a case was taken on a contingent basis, whether the attorney was able to mitigate the risk of nonpayment in any way, and whether other economic risks were aggravated by the contingency of payment.” Id. at 339 (internal quotations and citations omitted). However, that an attorney took on an OPRA matter on a contingent basis is only a threshold requirement. NJDPM, 185 N.J. at 156 (citing Rendine, 141 N.J. at 339). A prevailing party must show that the facts of the instant case are more than just a “‘garden variety’ OPRA matter”. NJDPM, 185 N.J. at 157.

Complainant’s Counsel asserted he should be awarded an enhancement of 50% in addition to his stated time and work performed due to taking this matter on a contingency basis. Counsel argued that because he was not guaranteed any type of payment from the Complainants, an enhanced fee award was appropriate pursuant to Rendine. Additionally, Counsel noted that OPRA does not authorize awards for damages, as the only forms of relief available were the disclosure of records and counsel fees for prevailing parties. N.J.S.A. 47:1A-6. Counsel next asserted that potential clients would not retain legal counsel on an hourly basis due to the knowledge of OPRA as a fee-shifting statute. Finally, Counsel contended there was no way to mitigate the risk of nonpayment.

Custodian’s Counsel maintained that in the instant matter, the Council held that the original Custodian did not knowingly or willfully violate OPRA. Counsel also noted that the original Custodian provided all responsive records by October 9, 2020, prior to the Council’s initial adjudication. Counsel therefore argued that the instant matter was a standard OPRA claim that did not warrant an enhancement. Counsel contended there was nothing in the matter that would warrant diverting from the general rule of not granting fee enhancements in OPRA litigation.

Upon review, the GRC does not find that a fee enhancement is warranted here. Although Complainant’s Counsel took on the instant case on a contingent basis, he failed to demonstrate that the facts of the instant case warrant a diversion from the general rule.

Counsel contends there was no way to mitigate the risk of nonpayment. However, the facts in this matter are the same or like those in L.R. v. Camden City Public Sch. Dist., 452 N.J. Super. 56 (App. Div. 2017), aff’d, 238 N.J. 547 (2019). In that case, Counsel served as co-counsel to one of the plaintiffs seeking access to “student records.” The court held that the plaintiffs were entitled to such records under OPRA. L.R., 452 N.J. Super. at 95. Counsel subsequently submitted the OPRA requests at issue here, seeking substantially the same records. The Council would ultimately hold in favor the Complainants, relying in part on L.R. See M.N. and E.N. OBO A.N. v. Gloucester Twp. Bd. of Educ. (Camden), GRC Complaint No. 2020-124 (Interim Order dated June 28, 2022). Given Counsel’s involvement and knowledge of L.R., the risk of nonpayment was low compared to counsel in NJDPM, as there was a high likelihood of success in obtaining access to the records.

Moreover, due to the court’s ruling in L.R., the instant matter was no longer a case of first impression, as was the case in NJDPM. Furthermore, the original Custodian was not found to have knowingly or willfully violated OPRA, and ultimately disclosed the responsive records ahead of the Council’s June 28, 2022 Interim Order. Accordingly, the facts of the case do not comport with the idea of “an unusual OPRA matter that warrants enhancement.” NJDPM, 185 N.J. at 158.

Therefore, no enhancement should be awarded, as Complainant’s Counsel failed to demonstrate that the facts of the instant matter warrant same.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because the parties failed to reach a fee agreement, and because the Complainant’s Counsel subsequently submitted a timely fee application, the Council should determine the reasonable amount of attorney’s fees to which the Complainant is entitled.
2. The Council finds that Complainant Counsel’s fee application conforms to the requirements of N.J.A.C. 1:105-2.13(b). However, for the reasons set forth above and within the table, the Council finds that the time expended was not reasonable. The Council finds that 18.2 hours at \$500.00 per hour and 1.5 hours at \$200.00 per hour are reasonable for the work performed by Complainant’s Counsel instant matter. **Accordingly, the Executive Director recommends that the Council award fees to**

Complainant's Counsel, in the adjusted amount of \$9,400.00, representing a decrease of 13.1 hours and \$7,000.00 from the originally filed fee application.

3. No enhancement should be awarded, as Complainant's Counsel failed to demonstrate that the facts of the instant matter warrant same.

Prepared By: Samuel A. Rosado
Staff Attorney

August 22, 2023



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 26, 2022 Government Records Council Meeting

M.N. and E.N. (o/b/o A.N.)
Complainant

Complaint No. 2020-124

v.

Gloucester Township Board of Education (Camden)
Custodian of Record

At the July 26, 2022 public meeting, the Government Records Council (“Council”) considered the July 19, 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 June 28, 2022 Interim Order because she failed to respond within the prescribed time frame and simultaneously provide certified confirmation of compliance to the Executive Director.
2. The original Custodian violated N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i) by providing responsive records untimely. The original Custodian also unlawfully denied access to a portion of the Complainants’ May 18, and May 19 2020 OPRA request seeking communications records. However, the original Custodian ultimately provided those responsive records in October 2020, and the Custodian certified that all responsive records have been provided to the Complainants. Further, the evidence of record does not indicate that the original Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original 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 June 28, 2022 Interim Order, the Complainants have achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainants’ 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 original Custodian provided records responsive to request items she initially denied access after the complaint filing. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainants are 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. **Based on this determination, the**

parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainants 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, Complainants' 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 26th Day of July 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: July 27, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
July 26, 2022 Council Meeting**

**M.N. and E.N. (on Behalf of A.N.)¹
Complainant**

GRC Complaint No. 2020-124

v.

**Gloucester Township Board of Education (Camden)²
Custodial Agency**

Records Relevant to Complaint: Electronic or hard copies of:

May 18, 2020 OPRA Request:

1. Records dated from 7/1/16 to present:
 - a. Financial records of [A.N.]. Financial records consist of contracts, bills, invoices, receipts, ledger accounts, purchase orders, payments, both sides of canceled checks which document payment of services provided to [A.N] and for payment for services provided to the [Gloucester Township Board of Education (“Board”)] for legal services.
 - b. The special education and education file(s) of [A.N] such as records kept by staff who provided A.N. special educational or educational services and the files of evaluators of A.N.
 - c. The health records file(s) of [A.N.]
 - d. Communications records pertaining to [A.N.]. Communications records consist of e-mails, memos, text messages, voice mail, and letters. Search terms are:
 - i. Date range; 7/1/16 to present;
 - ii. Sender or recipients: any of the following persons: a person listed in section 2 below or Steven Beech, Michael Gallaway, Linda Gross, Lawrence Laveman or Gregory Alberts; and
 - iii. The body or subject: contains any of the following terms: [A.N.] or [E.N.] or [M.N.]
2. N.J.S.A. 47:1A-10 information: regarding your staff listed below, the following is requested: title, position, salary, payroll record, length of service, data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for employment, date of separation (if any) and the reason.
 - a. Sandrah Hasenbalg
 - b. Carolyn Smith
 - c. Debra Wall
 - d. Jennifer Dyer
 - e. Raylee Aita

¹ Represented by Jamie Epstein, Esq. (Hamilton, NJ).

² Represented by Daniel H. Long, Esq., of Wade, Long, Wood & Long, LLC (Laurel Springs, NJ).

- f. David Hinlicky
- g. Linda Perrine
- h. Rachel Schalette
- i. Lauren Roberts
- j. Dana Brown
- k. Christopher Carosella
- l. Maria Naugle
- m. Tamyra Fernandes
- n. Carolyn Whitworth
- o. Ashley Craven
- p. Trisha Tarsatana
- q. Violet Martin
- r. Lawayne Williams
- s. Lia Dunn
- t. Kristen O'Lexy
- u. Amanda Palma
- v. Chad Leonard
- w. Irene Curran
- x. Erica Wisely
- y. Kevin O'Brien
- z. Claudine Camardo
- aa. Danial McGinley III
- bb. Alexandro Estrada
- cc. Audrey Jean Fitch
- dd. Allisa Adelizzi
- ee. Jean Grubb
- ff. John Bilodeau

May 19, 2020 OPRA Request:

1. Records, with student related personally identifiable information ("PII") redacted, in electronic or paper media, dated from 7/1/16 to present.
 - a. Cost Criteria for Independent Evaluation financial record file(s): Financial records consisting of contracts, bills, invoices, receipts ledger accounts, purchase orders, payments, both sides of canceled checks which document payment for Independent Evaluations paid for by the Board.
 - b. Cost Criteria for Independent Evaluation file(s): which include source documents used to develop the Cost Criteria such as notes, rate or fee schedules, surveys, publications, reports, expert opinions, affidavits, other school board's policies, [New Jersey Department of Education] guidance, etc.
 - c. Cost Criteria for Independent Evaluation file(s): for Board's or Administration's review such as directives, close or open meeting minutes, recorded votes or resolutions.
 - d. Cost Criteria for Independent Evaluation file(s): presented to a tribunal or government entity.
 - e. Cost Criteria for Independent Evaluation file(s): source documents for development of the Education Evaluation rate.

- f. Cost Criteria for Independent Evaluation communications records file(s): Search terms are
- i. Date range: 7/1/16 to present; and
 - ii. Sender or recipients: any of the following persons: a person listed below; and
 - iii. The body or subject: contains any of the following terms, Independent Evaluation or Independent Educational Evaluation or IEE
 1. Sandrah Hasenbalg
 2. Carolyn Smith
 3. Debra Wall
 4. Jennifer Dyer
 5. Raylee Aita
 6. David Hinlicky
 7. Linda Perrine
 8. Rachel Schalette
 9. Lauren Roberts
 10. Dana Brown
 11. Christopher Carosella
 12. Maria Naugle
 13. Tamyra Fernandes
 14. Carolyn Whitworth
 15. Ashley Craven
 16. Trisha Tarsatana
 17. Violet Martin
 18. Lawayne Williams
 19. Lia Dunn
 20. Kristen O'Lexy
 21. Amanda Palma
 22. Chad Leonard
 23. Irene Curran
 24. Erica Wisely
 25. Kevin O'Brien
 26. Claudine Camardo
 27. Danial McGinley III
 28. Alexandro Estrada
 29. Audrey Jean Fitch
 30. Allisa Adelizzi
 31. Jean Grubb
 32. John Bilodeau
 33. Mary Jo Dintino
 34. Anthony Marks
 35. Mark Gallo
 36. Carolyn Grace
 37. Brian Hammell
 38. Mary Ann Johnson
 39. Jennifer O'Donnell

40. Victoria Smith
41. Elliott Watson

Custodian of Record: Janice Grassia³

Request Received by Custodian: May 18, 2020; May 19, 2020

Response Made by Custodian: June 18, 2020

GRC Complaint Received: June 24, 2020

Background

June 28, 2022 Council Meeting:

At its June 28, 2022 public meeting, the Council considered the June 21, 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 original Custodian did not bear her burden of proof that she timely responded to the Complainants' OPRA requests. N.J.S.A. 47:1A-6. Notwithstanding the active public health emergency at the time of the request, the original Custodian failed to provide sufficient evidence that she made a "reasonable effort" to provide responses to the Complainants' OPRA requests, including responses to immediate access records. See N.J.S.A. 47:1A-5(i)(2). As such, the Custodian's failure to timely respond in writing to the Complainants' OPRA requests either granting access, denying access, seeking clarification, or requesting an extension of time resulted in a "deemed" denial of access pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), N.J.S.A. 47:1A-5(e), and Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007). However, the GRC declines to order disclosure of records responsive to the Complainants' May 18, 2020 OPRA request item Nos. 1a, 1c, and 2, and the Complainants' May 19, 2020 OPRA request item Nos. 1a-1e since the evidence of record demonstrates that the original Custodian provided responsive records to the Complainant. See Exhibit A.
2. The Complainants' May 18, 2020 OPRA request item No. 1d and May 19, 2020 OPRA request item No. 1f seeking "communications" were valid because they contained adequate criteria as addressed in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Furthermore, the Complainants' May 18, 2020 OPRA request item No. 1d was valid because it contained sufficient identifiers allowing the original Custodian to identify 54 pages of responsive e-mails. Burke v. Brandes, 429 N.J. Super. 169, 177 (App. Div. 2012); MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the

³ The Custodian of Record at the time of the request was Jean Grubb.

original Custodian failed to bear her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6. The Custodian must, after performing a sufficient search, disclose to the Complainants all records responsive to these request items to the Complainants, with redactions where applicable. If the Custodian has already disclosed said records or finds that none exist for one or the other OPRA request item, she must certify to this fact.

3. The original Custodian may have unlawfully denied access to the Complainants' May 18, 2020 OPRA request item No. 1b. N.J.S.A. 47:1A-6. Specifically, the Complainants qualified as excepted persons under N.J.A.C. 6A:32-7.5(e)(14) and (g) and were thus entitled to receipt of A.N.'s academic records pursuant to L.R. v. Camden City Pub. Sch. Dist., 452 N.J. Super. 56, 86-87 (2017). See also Doe v. Rutgers, State Univ. of N.J., 466 N.J. Super. 14 (App. Div. 2021); Epstein, Esq. (O.B.O. C.B.) v. Hopewell Crest Bd. of Educ. (Cumberland), GRC Complaint No. 2018-257 (Interim Order dated July 28, 2020). Thus, the Custodian must either: 1) disclose those special education records withheld as "student records", or 2) certify that no additional records beyond those previously disclosed existed.
4. **The Custodian shall comply with conclusion Nos. 2 and 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.⁶**
5. The Council defers analysis of whether the original 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.
6. 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 June 29, 2022, the Council distributed its Interim Order to all parties. On July 8, 2022, the Custodian responded to the Council's Interim Order and provided certified confirmation of compliance to the Executive Director.

⁴ 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.

⁵ "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."

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

The Custodian first certified that she was not the Custodian of Record at the time of the OPRA requests and was certifying to her review of her predecessor's records, along with consultation with counsel. The Custodian certified that with regard to conclusion No. 2 of the Interim Order, all responsive records were provided as part of the supplemental responses given in October 2020.

Regarding conclusion No. 3, the Custodian certified that 22 files comprising 335 pages of records were provided on June 5, 2020 and June 18, 2020. The Custodian certified that according to her review, those records constituted all records that were Gloucester Township Board of Education's ("Board") possession at the time the responses were given. The Custodian then certified that notwithstanding the above, the Board will provide the Complainants with an updated copy of all current student records pertaining to A.N. as soon as compiled. The Custodian certified that if Complainants' Counsel believed there were additional records still missing that he contacts the Board, and the Custodian would ensure that any responsive records in existence would be provided.

Analysis

Compliance

At its June 28, 2022 meeting, the Council ordered the Custodian to locate and disclose responsive records to item portions of the May 18, 2020 and May 19, 2020 OPRA requests, or certify that no responsive records exist or that all responsive records have been provided. 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 June 29, 2022, 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 July 7, 2022.

On July 8, 2022, the sixth (6th) business day after receipt of the Council's Order, the Custodian responded to the Council's Interim Order, certifying that all responsive records were provided to the Complainants in June and October 2020. The Custodian also provided certified confirmation of compliance to the Executive Director. Therefore, 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 June 28, 2022 Interim Order because she failed to respond within the prescribed time frame and simultaneously 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)).

Here, the original Custodian violated N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i) by providing responsive records untimely. The original Custodian also unlawfully denied access to a portion of the Complainants’ May 18, and May 19 2020 OPRA request seeking communications records. However, the original Custodian ultimately provided those responsive records in October 2020, and the Custodian certified that all responsive records have been provided to the Complainants. Further, the evidence of record does not indicate that the original Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prevailing Party Attorney’s Fees

OPRA provides that:

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

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

In Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006), the Appellate Division held that a complainant is a “prevailing party” if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct. *Id.* at 432. Additionally, the court held that attorney’s fees may be awarded when the requestor is successful

(or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct”(quoting Buckhannon Bd. & Care Home v. West Virginia Dep’t of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court held that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” Id. at 603 (quoting Black’s Law Dictionary 1145 (7th ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties . . .” Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863. Further, the Supreme Court expressed concern that the catalyst theory would spawn extra litigation over attorney’s fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

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

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

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

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

The Court in Mason, further held that:

[R]equestors are entitled to attorney’s fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) “a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved”; and (2) “that the

relief ultimately secured by plaintiffs had a basis in law.” Singer v. State, 95 N.J. 487, 495, cert. denied, New Jersey v. Singer, 469 U.S. 832 (1984).

[Id. at 76.]

In the instant matter, Complainants’ Counsel filed the instant complaint asserting that the Custodian unlawfully denied access to the requested records. Custodian’s Counsel argued that the portion of records seeking correspondence was invalid.

In determining whether the Complainants are 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 June 28, 2022 Interim Order, the Council held that the request items seeking correspondence were valid requests, and the Custodian certified that responsive records were provided by the original Custodian in October 2020, well after the filing of the instant complaint. Teeters, 387 N.J. Super. at 432. Thus, a causal nexus exists between this complaint and the change in the Board’s conduct. Mason, 196 N.J. at 76. Accordingly, the Complainants are a prevailing party entitled to attorney’s fees.

Therefore, pursuant to the Council’s June 28, 2022 Interim Order, the Complainants have 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 Complainants’ filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 71. Specifically, the original Custodian provided records responsive to request items she initially denied access after the complaint filing. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainants are 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. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainants 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, Complainants’ 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 June 28, 2022 Interim Order because she failed to respond within the prescribed time frame and simultaneously provide certified confirmation of compliance to the Executive Director.
2. The original Custodian violated N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i) by providing responsive records untimely. The original Custodian also unlawfully denied access to a portion of the Complainants’ May 18, and May 19 2020 OPRA request seeking communications records. However, the original Custodian ultimately provided those responsive records in October 2020, and the Custodian certified that all responsive records have been provided to the Complainants. Further,

the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the original 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 June 28, 2022 Interim Order, the Complainants have achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainants' 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 original Custodian provided records responsive to request items she initially denied access after the complaint filing. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainants are 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. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainants 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, Complainants' 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

July 19, 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

June 28, 2022 Government Records Council Meeting

M.N. and E.N. (o/b/o A.N.)

Complaint No. 2020-124

Complainant

v.

Gloucester Township Board of Education (Camden)

Custodian of Record

At the June 28, 2022 public meeting, the Government Records Council (“Council”) considered the June 21, 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 original Custodian did not bear her burden of proof that she timely responded to the Complainants’ OPRA requests. N.J.S.A. 47:1A-6. Notwithstanding the active public health emergency at the time of the request, the original Custodian failed to provide sufficient evidence that she made a “reasonable effort” to provide responses to the Complainants’ OPRA requests, including responses to immediate access records. See N.J.S.A. 47:1A-5(i)(2). As such, the Custodian’s failure to timely respond in writing to the Complainants’ OPRA requests either granting access, denying access, seeking clarification, or requesting an extension of time resulted in a “deemed” denial of access pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), N.J.S.A. 47:1A-5(e), and Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007). However, the GRC declines to order disclosure of records responsive to the Complainants’ May 18, 2020 OPRA request item Nos. 1a, 1c, and 2, and the Complainants’ May 19, 2020 OPRA request item Nos. 1a-1e since the evidence of record demonstrates that the original Custodian provided responsive records to the Complainant. See Exhibit A.
2. The Complainants’ May 18, 2020 OPRA request item No. 1d and May 19, 2020 OPRA request item No. 1f seeking “communications” were valid because they contained adequate criteria as addressed in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Furthermore, the Complainants’ May 18, 2020 OPRA request item No. 1d was valid because it contained sufficient identifiers allowing the original Custodian to identify 54 pages of responsive e-mails. Burke v. Brandes, 429 N.J. Super. 169, 177 (App. Div. 2012); MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the

original Custodian failed to bear her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6. The Custodian must, after performing a sufficient search, disclose to the Complainants all records responsive to these request items to the Complainants, with redactions where applicable. If the Custodian has already disclosed said records or finds that none exist for one or the other OPRA request item, she must certify to this fact.

3. The original Custodian may have unlawfully denied access to the Complainants' May 18, 2020 OPRA request item No. 1b. N.J.S.A. 47:1A-6. Specifically, the Complainants qualified as excepted persons under N.J.A.C. 6A:32-7.5(e)(14) and (g) and were thus entitled to receipt of A.N.'s academic records pursuant to L.R. v. Camden City Pub. Sch. Dist., 452 N.J. Super. 56, 86-87 (2017). See also Doe v. Rutgers, State Univ. of N.J., 466 N.J. Super. 14 (App. Div. 2021); Epstein, Esq. (O.B.O. C.B.) v. Hopewell Crest Bd. of Educ. (Cumberland), GRC Complaint No. 2018-257 (Interim Order dated July 28, 2020). Thus, the Custodian must either: 1) disclose those special education records withheld as "student records", or 2) certify that no additional records beyond those previously disclosed existed.
4. **The Custodian shall comply with conclusion Nos. 2 and 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**
5. The Council defers analysis of whether the original 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.
6. 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 28th Day of June 2022

Robin Berg Tabakin, Esq., Chair
Government Records Council

¹ 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.

² "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 Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

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: June 29, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 28, 2022 Council Meeting**

**M.N. and E.N. on behalf of A.N.¹
Complainant**

GRC Complaint No. 2020-124

v.

**Gloucester Township Board of Education (Camden)²
Custodial Agency**

Records Relevant to Complaint: Electronic or hard copies of:

May 18, 2020 OPRA Request:

1. Records dated from 7/1/16 to present:
 - a. Financial records of [A.N.]. Financial records consist of contracts, bills, invoices, receipts, ledger accounts, purchase orders, payments, both sides of canceled checks which document payment of services provided to [A.N] and for payment for services provided to the [Gloucester Township Board of Education (“Board”)] for legal services.
 - b. The special education and education file(s) of [A.N] such as records kept by staff who provided A.N. special educational or educational services and the files of evaluators of A.N.
 - c. The health records file(s) of [A.N.]
 - d. Communications records pertaining to [A.N.]. Communications records consist of e-mails, memos, text messages, voice mail, and letters. Search terms are:
 - i. Date range; 7/1/16 to present;
 - ii. Sender or recipients: any of the following persons: a person listed in section 2 below or Steven Beech, Michael Gallaway, Linda Gross, Lawrence Laveman or Gregory Alberts; and
 - iii. The body or subject: contains any of the following terms: [A.N.] or [E.N.] or [M.N.]
2. N.J.S.A. 47:1A-10 information: regarding your staff listed below, the following is requested: title, position, salary, payroll record, length of service, data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for employment, date of separation (if any) and the reason.
 - a. Sandrah Hasenbalg
 - b. Carolyn Smith
 - c. Debra Wall
 - d. Jennifer Dyer
 - e. Raylee Aita

¹ Represented by Jamie Epstein, Esq. (Hamilton, NJ).

² Represented by Daniel H. Long, Esq., of Wade, Long, Wood & Long, LLC (Laurel Springs, NJ).

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- f. David Hinlicky
- g. Linda Perrine
- h. Rachel Schalette
- i. Lauren Roberts
- j. Dana Brown
- k. Christopher Carosella
- l. Maria Naugle
- m. Tamyra Fernandes
- n. Carolyn Whitworth
- o. Ashley Craven
- p. Trisha Tarsatana
- q. Violet Martin
- r. Lawayne Williams
- s. Lia Dunn
- t. Kristen O'Lexy
- u. Amanda Palma
- v. Chad Leonard
- w. Irene Curran
- x. Erica Wisely
- y. Kevin O'Brien
- z. Claudine Camardo
- aa. Danial McGinley III
- bb. Alexandro Estrada
- cc. Audrey Jean Fitch
- dd. Allisa Adelizzi
- ee. Jean Grubb
- ff. John Bilodeau

May 19, 2020 OPRA Request:

1. Records, with student related personally identifiable information ("PII") redacted, in electronic or paper media, dated from 7/1/16 to present.
 - a. Cost Criteria for Independent Evaluation financial record file(s): Financial records consisting of contracts, bills, invoices, receipts ledger accounts, purchase orders, payments, both sides of canceled checks which document payment for Independent Evaluations paid for by the Board.
 - b. Cost Criteria for Independent Evaluation file(s): which include source documents used to develop the Cost Criteria such as notes, rate or fee schedules, surveys, publications, reports, expert opinions, affidavits, other school board's policies, [New Jersey Department of Education] guidance, etc.
 - c. Cost Criteria for Independent Evaluation file(s): for Board's or Administration's review such as directives, close or open meeting minutes, recorded votes or resolutions.
 - d. Cost Criteria for Independent Evaluation file(s): presented to a tribunal or government entity.
 - e. Cost Criteria for Independent Evaluation file(s): source documents for development of the Education Evaluation rate.

- f. Cost Criteria for Independent Evaluation communications records file(s): Search terms are
- i. Date range: 7/1/16 to present; and
 - ii. Sender or recipients: any of the following persons: a person listed below; and
 - iii. The body or subject: contains any of the following terms, Independent Evaluation or Independent Educational Evaluation or IEE
 1. Sandrah Hasenbalg
 2. Carolyn Smith
 3. Debra Wall
 4. Jennifer Dyer
 5. Raylee Aita
 6. David Hinlicky
 7. Linda Perrine
 8. Rachel Schalette
 9. Lauren Roberts
 10. Dana Brown
 11. Christopher Carosella
 12. Maria Naugle
 13. Tamyra Fernandes
 14. Carolyn Whitworth
 15. Ashley Craven
 16. Trisha Tarsatana
 17. Violet Martin
 18. Lawayne Williams
 19. Lia Dunn
 20. Kristen O'Lexy
 21. Amanda Palma
 22. Chad Leonard
 23. Irene Curran
 24. Erica Wisely
 25. Kevin O'Brien
 26. Claudine Camardo
 27. Danial McGinley III
 28. Alexandro Estrada
 29. Audrey Jean Fitch
 30. Allisa Adelizzi
 31. Jean Grubb
 32. John Bilodeau
 33. Mary Jo Dintino
 34. Anthony Marks
 35. Mark Gallo
 36. Carolyn Grace
 37. Brian Hammell
 38. Mary Ann Johnson
 39. Jennifer O'Donnell

40. Victoria Smith
41. Elliott Watson

Custodian of Record: Janice Grassia³

Request Received by Custodian: May 18, 2020; May 19, 2020

Response Made by Custodian: June 18, 2020

GRC Complaint Received: June 24, 2020

Background⁴

Request and Response:

On May 18, 2020, Complainants' Counsel submitted an Open Public Records Act ("OPRA") request to the original Custodian seeking the above-mentioned records. On May 19, 2020, Complainants' Counsel submitted a second OPRA request to the original Custodian seeking the above-mentioned records. On May 19, 2020, the original Custodian responded to Complainants' Counsel stating that the Gloucester Township Public School District's ("District") Business Office was closed as a precautionary measure. The original Custodian also stated that because of the closure all OPRA requests would be received and processed on the day the office reopened. Later that same day, Custodian's Counsel responded to Complainants' Counsel stating OPRA's deadlines under N.J.S.A. 47:1A-5(i) were no longer applicable under the amendment passed on March 20, 2020. Custodian's Counsel stated that he instructed the original Custodian to make all reasonable efforts to comply with the Complainants' requests within the seven (7) day period, but the District's circumstances involved staff not coming to the office every day to adhere to social distancing guidelines. Custodian's Counsel also stated that the District would keep the Complainant apprised as to the status of the request.

On May 21, 2020, Complainants' Counsel responded to Custodian's Counsel stating that the District had not laid off staff and were still being paid full compensation while working from home. Complainants' Counsel also stated that the original Custodian has at least indirect access to the responsive records from staff. Complainants' Counsel stated that there was no factual basis for the delay.

On June 1, 2020, Complainants' Counsel e-mailed Custodian's Counsel, stating that as of today's date, he has not received responsive records required to be produced immediately under N.J.S.A. 47:1A-5(e). Complainants' Counsel added that the Custodian has not provided any "circumstances" or record of "reasonable effort" made to search for responsive records under N.J.S.A. 47:1A-5(i)(2). That same day, the original Custodian provided a partial response to the OPRA request and added that the District was in the process of completing the remainder of the request.

³ The Custodian of Record at the time of the request was Jean Grubb.

⁴ 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.

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On June 4, 2020, Complainants' Counsel e-mailed Custodian's Counsel, stating that he received only a one (1) page record partially responsive to item No. 2 of the May 18, 2020 OPRA request, and no response to the May 19, 2020 OPRA request. Counsel added that he has not been updated on the status of his requests as assured by the original Custodian. Counsel asserted that it was the original Custodian's responsibility to advise when records can be made available. N.J.S.A. 47:1A-5(i)(1). Counsel requested the original Custodian notify when the remaining responsive records would be provided, including information omitted from the May 18, 2020 OPRA request item No. 2.

On June 5, 2020, the original Custodian provided responsive records to the Complainants' OPRA requests. On June 12, 2020, Complainants' Counsel replied to the original Custodian, asserting that the response did not address several request items and failed to present a basis for denial. N.J.S.A. 47:1A-6; Asbury Park Press v. Monmouth Cnty., 406 N.J. Super. 1, 7 (App. Div. 2009), aff'd, 201 N.J. 5 (2010). Counsel asserted that no responsive records were provided for the May 18, 2020 OPRA request item No. 1a and he received only a partial response to item No. 1d. Counsel stated that internal communications between certain staff and communications between certain dates were not included. Counsel added that the original Custodian's response to the May 18, 2020 OPRA request item No. 2 was deficient as it did not include the requested payroll records and additional personnel information. Counsel also maintained that the only record provided regarding the May 19, 2020 OPRA request was responsive to item Nos. 1b and 1c.

On June 18, 2020, the original Custodian responded to Counsel, providing additional responsive records to the Complainants' request. The original Custodian stated that with respect to the requested e-mails, all identifiable records were provided after a search by the District's IT department but noted that agencies were required to disclose only "identifiable" government records not otherwise exempt. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2010). The original Custodian also stated that regarding the request for independent evaluations, she stated that she provided all identifiable records, but that student records were exempt from disclosure pursuant to L.R. v. Camden City Public Sch. Dist., 452 N.J. Super. 56 (App. Div. 2017). The original Custodian also stated that if a requested record was not provided, then same did not exist or was in the District's possession or was not identifiable after search.

Denial of Access Complaint:

On June 24, 2020, Complainants' Counsel filed a Denial of Access Complaint with the Government Records Council ("GRC"). Counsel initially asserted that the original Custodian failed to timely respond to the OPRA requests when she failed to provide immediate access to the financial student records. N.J.S.A. 47:1A-5(e); Mason v. City of Hoboken, 196 N.J. 51, 65 (2008); North Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 2015 N.J. Super. Unpub. LEXIS 76, *43 (App. Div. 2015). Counsel further argued that the original Custodian never set an extension deadline or provide any updates on the status of the responses. N.J.S.A. 47:1A5(g); N.J.S.A. 47:1A-5(i); Kohn v. Twp. of Livingston Library, GRC Complaint No. 2007-124 (March 2008).

Counsel next argued that the original Custodian improperly referenced MAG, 375 N.J. Super. 534 to defend withholding access to requested records due to the parties' ongoing litigation

regarding a special education dispute. Counsel asserted that MAG did not support this contention, and that documents that are subject to access under OPRA are no less subject to access because the requestor filed a lawsuit against the agency. Mid-Atlantic Recycling Techs., Inc. v. City of Vineland, 222 F.R.D. 81, 85 (2004).

Counsel also contended that the original Custodian unlawfully denied access to the subject OPRA request on the basis that same was invalid. Counsel asserted that the original Custodian's denial did not comport with MAG, 375 N.J. Super. 534; Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37, (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). Counsel argued that the subject OPRA requests, while including the term "any and all," identified specific records and identified a finite time frame; the OPRA request included sufficient information to be valid. Counsel asserted that responding to the OPRA request only required the original Custodian to search for records in "centralized locations."

Counsel argued that the original Custodian's denial of the May 19, 2020 OPRA request based on L.R., 452 N.J. Super. 56 was improper. Counsel contended that per L.R., a requestor seeking access to "student records" may obtain them if they fall within the category of authorized persons under N.J.A.C. 6A:32-7.5(e), and Counsel asserted that the original Custodian had already disclosed records as part of a partial response to his requests. Counsel argued that the original Custodian did not present an argument as to how L.R. prohibits access to records requested on May 18, 2020. Counsel further argued that providing a partial response waives the right to deny access to the requested records on the validity basis. Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 213 (App. Div. 2005).

Counsel asserted that the original Custodian provided only partial responses to the OPRA requests, and the GRC should order disclosure of the outstanding request items, which included item Nos. 1a, 1b, 1d, 2, and the majority of the May 19, 2020 OPRA request. Counsel further argued that the Council should find that the original Custodian knowingly and willfully violated OPRA and that the Complainant is a prevailing party entitled to an award of attorney's fees.

Supplemental Responses:

On October 5, 2020, the original Custodian responded in part to the Complainants' May 19, 2020 OPRA request, providing records responsive to item Nos. 1a, 1b, 1c, and 1e. The original Custodian stated that with respect to the requested e-mails, all identifiable records were provided after a search by the District's IT department but noted that agencies were required to disclose only "identifiable" government records not otherwise exempt. MAG, 375 N.J. Super. at 546. The original Custodian also stated that with regard to the request for independent evaluations, she provided all identifiable records and that student records were exempt from disclosure pursuant to L.R., 452 N.J. Super. 56. The original Custodian also stated that if a requested record was not provided, then same did not exist, was not in the District's possession, or was not identifiable after search.

On October 9, 2020, the original Custodian e-mailed Counsel providing additional records responsive to the Complainants' May 18, 2020 request item No. 2. The original Custodian also

stated that such records constituted the remainder of responsive records for the May 18, 2020 OPRA request.

On October 16, 2020, the original Custodian e-mailed Counsel, stating that upon counting their documents, it appears invoices responsive to the May 18, 2020 OPRA request item No. 1a were missing. The original Custodian attached copies of the records to the e-mail, stating that the production should complete the request.

Statement of Information:⁵

On October 30, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainants’ OPRA request on May 18, 2020 and May 19, 2020. The Custodian certified that her search included consulting with District attorneys. The Custodian also certified that the child study team and business office located the applicable records. The Custodian certified that she responded in writing on June 5, 2020, June 18, 2020, October 5, 2020, October 9, 2020, and October 16, 2020.

The Custodian asserted that all responsive records have been provided to Counsel or stated that no responsive records exist. The Custodian included a table identifying when responsive records were provided to which request item, along with the number of pages.⁶

Regarding the May 18, 2020 OPRA request item No. 1d seeking e-mail correspondence, the Custodian asserted that fifty-four (54) pages of records were provided. Regarding the May 19, 2020 OPRA request item No. 1f seeking e-mail correspondence, the Custodian asserted that no records were provided. For those request items, the Custodian maintained that agencies are only required to disclose “identifiable” government records not otherwise exempt, and that OPRA was “not intended as a research tool litigants may use to force government officials to identify and siphon useful information.” MAG, 375 N.J. Super. at 546.

Analysis

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁷ Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the

⁵ On July 28, 2020, this complaint was referred to mediation. On October 22, 2020, the complaint was referred back to the GRC for adjudication.

⁶ See attached Exhibit A.

⁷ A custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

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complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

In Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007), the GRC held that "immediate access language of OPRA (N.J.S.A. 47:1A-5(e)) suggests that the Custodian was still obligated to immediately notify the Complainant. . ." Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond or requesting clarification of the request. Additionally, if immediate access items are contained within a larger OPRA request containing a combination of records requiring a response within seven (7) business days and immediate access records requiring an immediate response, a custodian still has an obligation to respond to immediate access items immediately. See Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Interim Order dated February 26, 2013).

Additionally, the Legislature amended OPRA on March 20, 2020, in response to the global pandemic. P.L. 2020, c.10. Based on that amendment, N.J.S.A. 47:1A-5(i)(2) now provides that:

During a period declared pursuant to the laws of this State as a state of emergency, public health emergency, or state of local disaster emergency, the deadlines by which to respond to a request for, or grant or deny access to, a government record under paragraph (1) of this subsection or subsection e. of this section shall not apply, provided, however, that the custodian of a government record shall make a reasonable effort, as the circumstances permit, to respond to a request for access to a government record within seven business days or as soon as possible thereafter.

[Id. (Emphasis added).]

Although adjudicated during the pendency of this matter, the GRC finds Dunwell (O.B.O. Borough of Alpha) v. Twp. of Phillipsburg (Warren), GRC Complaint No. 2020-64 (February 2022) pertinent. There, the complainant asserted that the custodian failed to timely provide immediate access records under OPRA. The custodian certified that at the time she received the OPRA request, the municipality was operating with reduced staff and subsequently shutdown temporarily due to the pandemic and could not provide a response until the fifth (5th) business day after receipt. The Council held that although the request was submitted prior to the enactment of N.J.S.A. 47:1A-5(i)(2), the custodian provided sufficient facts and circumstances to reasonably justify the delay in providing access to the immediate access records.

In the instant matter, the Complainants' May 18, 2020 OPRA request sought, among other records, contracts, bills, invoices, receipts, ledger accounts, purchase orders and payments (request item No. 1a). The Complainants' May 19, 2020 OPRA request also sought, among other records, contracts, bills, invoices, receipts, ledger accounts, purchase orders and payments (request item No. 1a). The original Custodian responded to Complainants' Counsel on May 19, 2020, stating that the District office was closed "as a precautionary measure." Additionally, Custodian's Counsel responded to Complainants' Counsel on May 19, 2020, stating that pursuant to the

amendment passed on March 20, 2020, the standard deadlines no longer applied during the public health emergency (“PHE”). In neither the initial responses or in the various partial responses did the original Custodian or Custodian’s Counsel provide estimated dates of future production. The original Custodian ultimately provided responsive records to both immediate access request items on October 5, 2020 and October 16, 2020. See Exhibit A. The Custodian also provided records responsive to the May 18, 2020 request item Nos. 1b-1d, and 2, and the May 19, 2020 request item Nos. 1b-1e. See Exhibit A.

A review of the evidence demonstrates that the original Custodian violated N.J.S.A. 47:1A-5(i). Although the OPRA request was made while a PHE was in effect, and thus the language under N.J.S.A. 47:1A-5(i)(2) applied, the statute still required a “reasonable effort” to provide a response to an OPRA request within the allotted period. The original Custodian and Custodian’s Counsel failed to provide facts or justifications for the delays in providing responses to the Complainants’ OPRA requests beyond limited staffing for an indeterminate period. In particular, the original Custodian failed to provide any justification for not providing immediate access records until October 5, 2020 and October 16, 2020, or more than four (4) months after receiving the OPRA requests.

Therefore, the original Custodian did not bear her burden of proof that she timely responded to the Complainants’ OPRA requests. N.J.S.A. 47:1A-6. Notwithstanding the active PHE at the time of the request, the original Custodian failed to provide sufficient evidence that she made a “reasonable effort” to provide responses to the Complainants’ OPRA requests, including responses to immediate access records. See N.J.S.A. 47:1A-5(i)(2). As such, the Custodian’s failure to timely respond in writing to the Complainants’ OPRA requests either granting access, denying access, seeking clarification, or requesting an extension of time resulted in a “deemed” denial of access pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), N.J.S.A. 47:1A-5(e), and Herron, GRC 2006-178. However, the GRC declines to order disclosure of records responsive to the Complainants’ May 18, 2020 OPRA request item Nos. 1a-1c, and 2, and the Complainants’ May 19, 2020 OPRA request item Nos. 1a-1e since the evidence of record demonstrates that the original Custodian provided responsive records to the Complainant. See Exhibit A.

Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.

[MAG, 375 N.J. Super. at 546.]

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. (emphasis added). Bent, 381 N.J. Super. at 37⁸; N.J. Builders Ass’n, 390 N.J. Super. at 180; Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. at 546; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. See e.g. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See e.g. Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

With respect to requests for e-mails and correspondence, the GRC established specific criteria deemed necessary under OPRA to request such records in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). The Council determined that to be valid, such requests must contain (1) the content and/or subject of the email, (2) the specific date or range of dates during which the email(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof. Id.; see also Sandoval v. N.J. State Parole Bd., GRC Complaint No. 2006-167 (Interim Order dated March 28, 2007). The Council has also applied the criteria set forth in Elcavage to other forms of correspondence, such as letters and text messages. See e.g. Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011); Alt v. City of Vineland (Cumberland), GRC Complaint No. 2013-205 (June 2014).

Further, in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), the court held that the defendant “performed a search and was able to locate records responsive . . .” which “. . . belied any assertion that the request was lacking in specificity or was overbroad.” Id. at 177. See also Gannett v. Cnty. of Middlesex, 379 N.J. Super. 205 (App. Div. 2005) (holding that “[s]uch a voluntary disclosure of most of the documents sought . . . constituted a waiver of whatever right

⁸ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

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the County may have had to deny Gannett's entire OPRA request on the ground that it was improper.” Id. at 213). Generally, in situations where a request was overly broad on its face but the custodian nonetheless was able to locate records, the Council has followed Burke in determining that the request contained sufficient information for record identification. See Bond v. Borough of Washington (Warren), GRC Complaint No. 2009-324 (Interim Order dated March 29, 2011); Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2010-302 (Interim Order dated January 31, 2012).

In the instant matter, the Complainants’ May 18, 2020 OPRA request item No. 1d sought “communications” between District employees regarding M.N., E.N., and A.N. from July 1, 2016 to present. Additionally, the Complainants’ May 19, 2020 OPRA request item No. 1f sought “communications” between several individuals regarding “Independent Evaluation or Independent Educational Evaluation or IEE” from July 1, 2016 to present. The original Custodian provided responsive records on June 5, 2020 for the May 18, 2020 OPRA request item, but provided no responsive records to the May 19, 2020 OPRA request item. In both responses, the original Custodian stated that under MAG, she was only required to disclose “identifiable records” and that OPRA did not permit open-ended searches of an agency’s files.

In reviewing both request items, the GRC is persuaded that they are valid. The request items identified senders and recipients, the subject and/or content, and a definitive time frame, as required by Elcavage. Furthermore, the original Custodian provided responsive records to the May 18, 2020 OPRA request item No. 1d. See Exhibit A. Thus, the original Custodian’s ability to locate responsive e-mails belies the argument that the request was invalid. See Burke, 429 N.J. Super. 169.

Accordingly, the Complainants’ May 18, 2020 OPRA request item No. 1d and May 19, 2020 OPRA request item No. 1f seeking “communications” were valid because they contained adequate criteria as addressed in Elcavage, GRC 2009-07. Furthermore, the Complainants’ May 18, 2020 OPRA request item No. 1d was valid because it contained sufficient identifiers allowing the original Custodian to identify 54 pages of responsive e-mails. Burke, 429 N.J. Super. at 177; MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151. Thus, the original Custodian failed to bear her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6. The Custodian must, after performing a sufficient search, disclose to the Complainant all records responsive to these request items to the Complainants, with redactions where applicable. If the Custodian has already disclosed said records or finds that none exist for one or the other OPRA request item, she must certify to this fact.

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.

Special Education Records

The regulations of the State Board of Education and the Commissioner define a “student record” as “. . . information related to an individual student *gathered within or outside the school district and maintained within the school district*, regardless of the physical form in which it is maintained.” N.J.A.C. 6A:32-2.1 (emphasis added). The regulations of the State Board of Education and the Commissioner of Education provide that “[o]nly authorized organizations, agencies or persons as defined herein shall have access to student records . . .” to include “persons from outside the school if they have written consent of the parent . . .” N.J.A.C. 6A:32-7.5(e)(14). Finally, the regulations require that “[i]n complying with this section, individuals shall adhere to requirements pursuant to [OPRA] and [FERPA].” N.J.A.C. 6A:32-7.5(g). To this end, the Council has looked to these exceptions in determining whether a complainant can access “student records” in part or whole under OPRA. See *i.e.* Martinez v. Edison Bd. of Educ. (Middlesex), GRC Complaint No. 2014-126 (May 2015); but see Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2014-92 (September 2014).

More recently, the Appellate Division addressed OPRA and the disclosure of “student records” in L.R., 452 N.J. Super. 56 (App. Div. 2017). In one of the four (4) consolidated cases, the trial court ordered the school district to disclose student records requested under OPRA, with redactions made to all personally identifying information (“PII”). The Appellate Division held that redacting PII from a document does not remove its classification as a “student record.” Id. at 83. The court found that “N.J.A.C. 6A:32-7.5(g)’s does not expressly incorporate FERPA’s provisions for the redaction of PII into the NJPRA or its regulations. Moreover, nothing in the NJPRA or its regulations states that sufficiently anonymized documents, with all PII removed, are no longer “student records” under N.J.A.C. 6A:32-1.” Id. at 85.

The court further discussed the interplay between the NJPRA, FERPA and OPRA:

It is reasonable to conclude that N.J.A.C. 6A:32-7.5(g) centrally concerns functionality—a district’s *processing* of student record requests from an authorized person or organization. See K.L., *supra*, 423 N.J. Super. at 350, 32 A.3d 1136 (“In providing access to school records in accordance with N.J.A.C. 6A:32-7.5, school districts must also comply with the requirements of OPRA and FERPA, N.J.A.C. 6A:32-7.5(g).”). For instance, if a school district receives an OPRA request from an authorized person or organization listed under N.J.A.C. 6A:32-7.5(e), then it must process that request in compliance with OPRA and FERPA requirements. Nothing in the plain language of N.J.A.C. 6A:32-7.5(g), however, supersedes or nullifies the limitations of “authorized” parties, as set forth at N.J.A.C. 6A:32-7.5(a) and (e). Hence, we agree with the judge in the Hillsborough case that a requestor cannot gain access to a student record unless the requestor satisfies one of the “[a]uthorized” categories listed in N.J.A.C. 6A:32-7.5(e)(1) through (16).

[Id. at 86-87 (emphasis in original).]⁹

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The Supreme Court of New Jersey subsequently affirmed the above by equal division noting that “N.J.A.C. 6A:32-7.5(g) confirms that individuals and entities may request student records in accordance with OPRA’s provisions, and that educational agencies must comply with those provisions when they respond to such requests.” L.R. v. Camden City Pub. Sch. Dist., 238 N.J. 547, 569 (2019).

After the filing of this complaint, in C.B., GRC 2018-257, the Council interpreted L.R. to allow for the disclosure of “student records” under OPRA where the requestor could substantiate that they were an excepted party. In reaching this conclusion, the Council noted that the New Jersey Department of Education’s own regulations support OPRA as an option for access to “student records.” N.J.A.C. 6A:32-7.5(g). This position was supported by Doe v. Rutgers, State Univ. of N.J., 466 N.J. Super. 14 (App. Div. 2021), where the court held that plaintiff could access his own higher education records under OPRA. Id. at 25 (citing L.R., 452 N.J. Super. at 89).

In the matter before the Council, the Complainants’ May 18, 2020 OPRA request item No. 1b sought special education records regarding A.N. and included a signed authorization form from A.N.’s parents. On June 5, 2020 and June 18, 2020, the original Custodian responded to this portion of the Complainants’ request providing 310 pages and 25 pages of records, respectively. The original Custodian then noted that “student records” were exempt from disclosure pursuant to L.R. Complainants’ Counsel asserted that the provided records were incomplete. In the SOI, the Custodian provided no response to the allegations that the provided records were incomplete, or addressed whether some records were withheld pursuant to L.R.

Upon review, the evidence of record is unclear whether the original Custodian provided all responsive records to request item No. 1b. Like the complainants in C.B., GRC 2018-257, the Complainants in this matter submitted recognized authorization to retrieve “student records” in accordance with N.J.A.C. 6A:32-7.5(e)(14) and (g). Therefore, the Custodian’s reliance on L.R. to potentially withhold “student records” in response to the OPRA request was improper, and the Custodian will need to disclose any responsive records denied on that basis.

Accordingly, the original Custodian may have unlawfully denied access to the Complainants’ May 18, 2020 OPRA request item No. 1b. N.J.S.A. 47:1A-6. Specifically, the Complainants qualified as excepted persons under N.J.A.C. 6A:32-7.5(e)(14) and (g) and were thus entitled to receipt of A.N.’s academic records pursuant to L.R., 452 N.J. Super. at 86-87. See also Doe, 466 N.J. Super. 14; C.B., GRC 2018-257. Thus, the Custodian must either: 1) disclose those special education records withheld as “student records”, or 2) certify that no additional records beyond those previously disclosed existed.

Knowing & Willful

The Council defers analysis of whether the original 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 original Custodian did not bear her burden of proof that she timely responded to the Complainants' OPRA requests. N.J.S.A. 47:1A-6. Notwithstanding the active public health emergency at the time of the request, the original Custodian failed to provide sufficient evidence that she made a "reasonable effort" to provide responses to the Complainants' OPRA requests, including responses to immediate access records. See N.J.S.A. 47:1A-5(i)(2). As such, the Custodian's failure to timely respond in writing to the Complainants' OPRA requests either granting access, denying access, seeking clarification, or requesting an extension of time resulted in a "deemed" denial of access pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), N.J.S.A. 47:1A-5(e), and Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007). However, the GRC declines to order disclosure of records responsive to the Complainants' May 18, 2020 OPRA request item Nos. 1a, 1c, and 2, and the Complainants' May 19, 2020 OPRA request item Nos. 1a-1e since the evidence of record demonstrates that the original Custodian provided responsive records to the Complainant. See Exhibit A.
2. The Complainants' May 18, 2020 OPRA request item No. 1d and May 19, 2020 OPRA request item No. 1f seeking "communications" were valid because they contained adequate criteria as addressed in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). Furthermore, the Complainants' May 18, 2020 OPRA request item No. 1d was valid because it contained sufficient identifiers allowing the original Custodian to identify 54 pages of responsive e-mails. Burke v. Brandes, 429 N.J. Super. 169, 177 (App. Div. 2012); MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Thus, the original Custodian failed to bear her burden of proving a lawful denial of access pursuant to N.J.S.A. 47:1A-6. The Custodian must, after performing a sufficient search, disclose to the Complainants all records responsive to these request items to the Complainants, with redactions where applicable. If the Custodian has already disclosed said records or finds that none exist for one or the other OPRA request item, she must certify to this fact.
3. The original Custodian may have unlawfully denied access to the Complainants' May 18, 2020 OPRA request item No. 1b. N.J.S.A. 47:1A-6. Specifically, the Complainants

qualified as excepted persons under N.J.A.C. 6A:32-7.5(e)(14) and (g) and were thus entitled to receipt of A.N.'s academic records pursuant to L.R. v. Camden City Pub. Sch. Dist., 452 N.J. Super. 56, 86-87 (2017). See also Doe v. Rutgers, State Univ. of N.J., 466 N.J. Super. 14 (App. Div. 2021); Epstein, Esq. (O.B.O. C.B.) v. Hopewell Crest Bd. of Educ. (Cumberland), GRC Complaint No. 2018-257 (Interim Order dated July 28, 2020). Thus, the Custodian must either: 1) disclose those special education records withheld as "student records", or 2) certify that no additional records beyond those previously disclosed existed.

4. **The Custodian shall comply with conclusion Nos. 2 and 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹⁰ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,¹¹ to the Executive Director.¹²**
5. The Council defers analysis of whether the original 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.
6. 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

June 21, 2022

¹⁰ 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.

¹¹ "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."

¹² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

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JE OPRA Response Summary

Date Request	Item Request	Date Response	# pages Response	# files
5/18/2020	1a	10/16/2020	5	1
5/18/2020	1b	6/5/2020	310	18
		6/18/2020	25	4
5/18/2020	1c	6/5/2020	7	1
5/18/2020	1d	6/5/2020	54	1
		Provided what was available		
5/18/2020	2	6/1/2020	1	1
		6/18/2020	1	1
		10/9/2020	96	1
5/19/2020	a	10/5/2020	54	1
5/19/2020	b,c	6/5/2020	1	1
		10/5/2020	59	1
5/19/2020	d	None exist		
5/19/2020	e	10/5/2020	1	1
5/19/2020	f	Not provided		