



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 14, 2021 Government Records Council Meeting

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

Complaint No. 2020-16

v.
City of Paterson (Passaic)
Custodian of Record

At the December 14, 2021 public meeting, the Government Records Council (“Council”) considered the December 8, 2021 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Council dismiss this complaint because the Complainant withdrew it on November 19, 2021. Therefore, no further adjudication is required.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 14th Day of December 2021

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: December 16, 2021



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

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

GRC Complaint No. 2020-16

v.

**City of Paterson (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:³

1. The General Order for your Police Department.
2. Records showing the name, rank, and date of hire of each employee in your Police Department who has access to eCDR. For clarification, we need to know how many members of your Police Department have access to eCDR.
3. Records showing the name, rank, and date of hire of each employee in your Police Department who has access to ATS/ACS. For clarification, we need to know how many members of your Police Department have access to ATS/ACS.

Custodian of Record: Sonia Gordon

Request Received by Custodian: December 30, 2019

Response Made by Custodian: January 6, 2020

GRC Complaint Received: January 22, 2020

Background

November 9, 2021 Council Meeting:

At its November 9, 2021 public meeting, the Council considered the October 26, 2021 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA item No. 1 seeking a copy of PPD's "General Order". Specifically, the Custodian certified in the SOI, and the record reflects, that no

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

² Represented by Harlynn A. Lack, Esq., Assistant Corporation Counsel (Paterson, NJ).

³ The Complainant sought additional records that are not at issue in this complaint.

responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

2. The Custodian unlawfully denied access to the Complainant's OPRA request item Nos. 2 and 3 seeking disclosable personnel information. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156 *et seq.* (Interim Order dated June 29, 2010). However, the GRC declines to order disclosure since the evidence of record demonstrates that the Custodian disclosed the requested information on February 14, 2020.
3. The Custodian unlawfully denied access to the Complainant's OPRA request item Nos. 2 and 3. N.J.S.A. 47:1A-6. However, the Custodian ultimately disclosed the requested personnel information after the instant complaint was filed. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
4. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Custodian provided the responsive records after the instant complaint was filed. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Procedural History:

On November 10, 2021, the Council distributed its Interim Order to all parties. On November 19, 2021, the Complainant e-mailed the Government Records Council ("GRC") advising that he was withdrawing the matter, stating that he did not spend enough time to go through additional litigation.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends that the Council dismiss this complaint because the Complainant withdrew it on November 19, 2021. Therefore, no further adjudication is required.

Prepared By: Samuel A. Rosado
Staff Attorney

December 8, 2021



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

November 9, 2021 Government Records Council Meeting

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

Complaint No. 2020-16

v.
City of Paterson (Passaic)
Custodian of Record

At the November 9, 2021 public meeting, the Government Records Council (“Council”) considered the October 26, 2021 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA item No. 1 seeking a copy of PPD’s “General Order”. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian unlawfully denied access to the Complainant’s OPRA request item Nos. 2 and 3 seeking disclosable personnel information. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156 *et seq.* (Interim Order dated June 29, 2010). However, the GRC declines to order disclosure since the evidence of record demonstrates that the Custodian disclosed the requested information on February 14, 2020.
3. The Custodian unlawfully denied access to the Complainant’s OPRA request item Nos. 2 and 3. N.J.S.A. 47:1A-6. However, the Custodian ultimately disclosed the requested personnel information after the instant complaint was filed. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
4. The Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Custodian provided the responsive records

after the instant complaint was filed. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Interim Order Rendered by the
Government Records Council
On The 9th Day of November 2021

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: November 10, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 9, 2021 Council Meeting**

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

GRC Complaint No. 2020-16

v.

**City of Paterson (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:³

1. The General Order for your Police Department.
2. Records showing the name, rank, and date of hire of each employee in your Police Department who has access to eCDR. For clarification, we need to know how many members of your Police Department have access to eCDR.
3. Records showing the name, rank, and date of hire of each employee in your Police Department who has access to ATS/ACS. For clarification, we need to know how many members of your Police Department have access to ATS/ACS.

Custodian of Record: Sonia Gordon

Request Received by Custodian: December 30, 2019

Response Made by Custodian: January 6, 2020

GRC Complaint Received: January 22, 2020

Background⁴

Request and Response:

On December 29, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 6, 2020, the Custodian responded in writing stating that no responsive records exist for request item No. 1. For item Nos. 2 and 3, the Custodian stating that every sworn law enforcement officer in the City of Patterson (“City”) has access to eCDR and ATS/ACS.

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

² Represented by Harlynn A. Lack, Esq., Assistant Corporation Counsel (Paterson, NJ).

³ The Complainant sought additional records that are not at issue in this complaint.

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.

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. City of Paterson (Passaic), 2020-16 – Findings and Recommendations of the Executive Director

Denial of Access Complaint:

On January 22, 2020 the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that other police departments were able to provide records responsive to item No. 1 and provided examples of same. The Complainant also asserted that the Custodian failed to provide the name, rank, and date of hire for item Nos. 2 and 3. The Complainant argued that such information stems from N.J.S.A. 47:1A-10’s language relating to personnel records.

The Complainant requested the GRC to compel full compliance with item Nos. 1, 2, and 3 of the OPRA request. The Complainant also requested the GRC award counsel fees.

Statement of Information:

On February 14, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on December 30, 2019. The Custodian certified that she forwarded the request to the City’s Police Department (“PPD”) on that same day. The Custodian certified that she responded in writing on January 6, 2020.

Regarding item No. 1, the Custodian asserted that PPD did not have a “general order” as requested. The Custodian contended that PPD maintained several “Standard Operating Procedures” (“SOP”) covering various topics. The Custodian argued that the Complainant did not clarify his request and therefore was lawfully denied due to being overly vague. New Jersey Builders Ass’n v. New Jersey Council on Affordable Hous., 390 N.J. Super. 166, 177 (App. Div. 2007); MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

Regarding item Nos. 2 and 3, the Custodian asserted that Sgt. D’Arco timely responded to the Complainant’s OPRA request by stating that all sworn law enforcement officers with PPD have access to eCDR and ACS/ATS. The Custodian asserted that after the instant complaint was filed, the Complainant submitted documents received from other police departments containing the list of officers with access to eCDR and ACS/ATS. The Custodian asserted that Sgt. D’Arco answered the question asked by the Complainant, but nevertheless provided an Excel spreadsheet containing a list of all police officers within PPD, including their name, rank, and date of hire.

Additional Submissions:

On February 16, 2020, the Complainant responded to the Custodian’s SOI. The Complainant asserted that it was unlikely that PPD did not have a General Order, but if so then the sole remaining issue was the attorney fee award.

The Complainant asserted that based upon the “catalyst” theory outlined in Teeters v. DYFS, 387 N.J. Super. 423, 429-31 (App. Div. 2006), a prevailing party must show that the lawsuit was casually related to securing the relief obtained, and that the relief granted had some basis in law. The Complainant argued that under Warrington v. Vill. Supermarkets, Inc., 328 N.J. Super. 410, 420 (App. Div. 2000), a prevailing party succeeds when the relief on the merits materially

alters the relationship between the parties.

The Complainant argued that the chronology of the instant matter demonstrated that the City altered its behavior after receiving the complaint. Specifically, the Complainant asserted that the City provided the requested personnel information (name, rank, and date of hire) after the complaint filing and after the GRC requested an SOI. The Complainant therefore argued the complaint was the catalyst that prompted the City to disclose responsive records and was thus a prevailing party entitled to a fee award. Warrington, 328 N.J. Super. at 420.

Analysis

Unlawful Denial of Access

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

Item No. 1

In Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005), the custodian certified that no records responsive to the complainant’s request for billing records existed and the complainant submitted no evidence to refute the custodian’s certification regarding said records. The GRC determined that, because the custodian certified that no records responsive to the request existed and no evidence existed in the record to refute the custodian’s certification, there was no unlawful denial of access to the requested records.

In the instant matter, Sgt. D’Arco initially responded to the Complainant stating that no responsive records exist but provided a copy of PPD’s SOP as an alternative. The Custodian subsequently certified to this fact in the SOI and added that because the Complainant did not clarify his request, it was vague and properly denied.⁵ The Complainant asserted that other police departments provided General Orders and found it unlikely that PPD did not possess one. However, the Complainant provided no evidence to support that PPD were required by law to make, maintain, or keep on file a “General Order.”

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA item No. 1 seeking a copy of PPD’s “General Order”. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

⁵ Although the Custodian argued that item No. 1 was an invalid request pursuant to MAG, the GRC declines to find the request item invalid since Sgt. D’Arco was able to conduct a search for records. See Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012); Bond v. Borough of Washington (Warren), GRC Complaint No. 2009-324 (Final Decision dated March 29, 2011).

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. City of Paterson (Passaic), 2020-16 – Findings and Recommendations of the Executive Director

Item Nos. 2 & 3

Regarding personnel records, OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011). These exceptions include “an individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received shall be government record.” N.J.S.A. 47:1A-10.

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010), the Council determined that “name, title, position, salary, payroll record and length of service” is information which is specifically considered to be a “government record” under N.J.S.A. 47:1A-10, and that “payroll records” must be disclosed pursuant to Jackson, GRC 2002-98. The Council thus held that the complainant’s March 25, 2009, request for “[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009” was a valid request pursuant to OPRA. *Id.* at 5. Additionally, prior GRC case law supports the disclosure of database information regarding personnel actions. See Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). Further, the Council has previously required that responding to an OPRA request for personnel information requires a custodian provide the most comprehensive records containing the responsive information. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012).

In the instant matter, the Complainant sought the “name, rank, and date of hire” of each employee at PPD with access to eCDR and ACS/ATS. The Complainant also added in each item that he wished to know the number of employees who have access to the aforementioned databases. Sgt. D’Arco responded to the request by stating that all sworn law enforcement officers have access to the databases but did not provide the personnel information. After the Complainant filed the instant matter, the Custodian provided an Excel spreadsheet containing the name, rank, and date of hire for each police officer as part of the SOI.

Upon review, the Custodian unlawfully denied access to the requested personnel information. Although the Complainant’s initial request may have required research in determining what PPD personnel have access to eCDR and ACS/ATS, no research was needed in this matter since Sgt. D’Arco stated that all police officers have access to those systems. Thus, Sgt. D’Arco could have provided the Complainant with the Excel spreadsheet containing the personnel information considered valid under Danis, GRC 2009-156. See also Paff v. Galloway Twp., 229 N.J. 340, 355 (2017) (A records request “should not require the records custodian to undertake a subjective analysis to understand the nature of the request. Seeking particular information from the custodian is permissible.”).

Accordingly, the Custodian unlawfully denied access to the Complainant’s OPRA request item Nos. 2 and 3 seeking disclosable personnel information. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Danis, GRC 2009-156. However, the GRC declines to order disclosure since the evidence of record demonstrates that the Custodian disclosed the requested information on February 14, 2020.

Knowing & Willful

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

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

In the matter before the Council, the Custodian unlawfully denied access to the Complainant’s OPRA request item Nos. 2 and 3. N.J.S.A. 47:1A-6. However, the Custodian ultimately disclosed the requested personnel information after the instant complaint was filed. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prevailing Party Attorney’s Fees

OPRA provides that:

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

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

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

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct” (quoting Buckhannon Bd. & Care Home v. West Virginia Dep’t of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court held that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” Id. at 603 (quoting Black’s Law Dictionary 1145 (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.]

Here, the Complainant sought in part the name, rank, and date of hire of PPD members who have access to the eCDR and/or ACS/ATS. The Custodian initially responded by stating that all law enforcement personnel at PPD have access to both databases. The Complainant filed the instant complaint, argued that the Custodian failed to provide the requested personnel information. On February 14, 2020, as part of the SOI, the Custodian provided an Excel spreadsheet containing the requested personnel information.

In determining whether the Complainant is a prevailing party entitled to attorney's fees, the GRC is satisfied that the evidence of record supports a conclusion in the affirmative. The Custodian initially denied access to the Complainant's request on January 6, 2020 by failing to provide the requested personnel information. It was not until after the instant complaint was filed on January 22, 2020 that the Custodian provided the personnel information alongside her SOI. Thus, a causal nexus exists between this complaint and the change in the Custodian's conduct. Mason, 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney's fees.⁶

Therefore, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters, 387 N.J. Super. at 432. Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the Custodian provided the responsive records after the instant complaint was filed. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

⁶ The Council makes this determination with the understanding that the Complainant acted on behalf of a bona fide client at the time of the request. Although the Complainant's status as representing an actual client has been previously challenged, the available evidence on the record is insufficient to address that issue herein. See Owoh, Esq. (O.B.O. AADARI) v. Neptune City Police Dep't (Monmouth), GRC Complaint No. 2018-153 (April 2020) and Owoh, Esq. (O.B.O. AADARI) v. Freehold Twp. Police Dep't (Monmouth), GRC Complaint No. 2018-155 (Interim Order dated September 29, 2020).

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. City of Paterson (Passaic), 2020-16 – Findings and Recommendations of the Executive Director

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant's OPRA item No. 1 seeking a copy of PPD's "General Order". Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian unlawfully denied access to the Complainant's OPRA request item Nos. 2 and 3 seeking disclosable personnel information. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156 *et seq.* (Interim Order dated June 29, 2010). However, the GRC declines to order disclosure since the evidence of record demonstrates that the Custodian disclosed the requested information on February 14, 2020.
3. The Custodian unlawfully denied access to the Complainant's OPRA request item Nos. 2 and 3. N.J.S.A. 47:1A-6. However, the Custodian ultimately disclosed the requested personnel information after the instant complaint was filed. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
4. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Custodian provided the responsive records after the instant complaint was filed. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

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October 26, 2021