



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

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

December 14, 2021 Government Records Council Meeting

Goutam U. Jois (o/b/o Gustavo Martinez)
Complainant

Complaint No. 2020-171

v.

Monmouth County Prosecutor's Office
Custodian of Record

At the December 14, 2021 public meeting, the Government Records Council ("Council") considered the December 8, 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 lawfully denied access to the requested witness interviews, which are exempt from disclosure under the Internal Affairs Policy and Procedures. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9; O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 379 (App. Div. 2009); Camarata v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2014-127 (June 2015). Further, the Internal Affairs Policy and Procedures does not support that the Monmouth County Prosecutor's Office waived any privilege by disclosing investigation details in the Findings. Internal Affairs Policy and Procedures at ¶ 9.6.1; Rivera v. Union Cnty. Prosecutor's Office, 2020 N.J. Super. Unpub. LEXIS 1192 (App. Div. 2020).
2. The Custodian did not unlawfully deny access to any records responsive to the Complainant's OPRA request not otherwise exempt from disclosure because she certified, and the record reflects, that she disclosed all that existed. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
3. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Custodian lawfully denied access to the requested witness interviews and disclosed all other records that existed. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51.

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

Final Decision Rendered by the
Government Records Council
On The 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**

**Findings and Recommendations of the Executive Director
December 14, 2021 Council Meeting**

**Goutam U. Jois (On Behalf of Gustavo Martinez)¹
Complainant**

GRC Complaint No. 2020-171

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v.

**Monmouth County Prosecutor's Office²
Custodial Agency**

Records Relevant to Complaint: "All documents, materials, and/or information, in whatever form, received, created, and/or reviewed in connection with the Monmouth County Prosecutor's Office's ["MCPO"] investigation into the June 1, 2020 arrest of Asbury park Press reporter Gustavo Martinez including, without limitation, all such documents, materials, and/or information described in, considered for, relied upon, or referred to in the Investigative Findings dated July 8, 2020, . . . include[ing] the names of the 21 people (including 14 members of law enforcement) interviewed as part of the investigation."

Custodian of Record: Lori Linskey
Request Received by Custodian: July 15, 2020
Response Made by Custodian: July 23, 2020
GRC Complaint Received: September 16, 2020

Background³

Request and Response:

On July 15, 2020, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On July 23, 2020, the Custodian's Counsel responded in writing on behalf of the Custodian stating that said response fell within the seven (7) business day time frame notwithstanding amendments to OPRA as a result of the ongoing public health emergency.⁴ Counsel stated that MCPO objected to the portion of the OPRA request seeking "materials, and/or information," as well as the portion of the request seeking "names of 21 people," as invalid. Counsel stated that as to the remaining portion of the request seeking "documents," the identified investigation was performed in accordance with the Internal Affairs Policy and Procedures ("IAPP") and that responsive records were exempt from disclosure under

¹ The Complainant represents Gustavo Martinez.

² Represented by David A. Clark, Esq. of Gluck, Walrath, LLP. (Freehold, NJ).

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

⁴ See P.L. 2020, c. 10.

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same. N.J.S.A. 47:1A-9; IAPP §9.6; Paff v. Bergen Cnty., 2017 N.J. Super. Unpub. LEXIS 627 (App. Div. 2017); Rivera v. Union Cnty. Prosecutor's Office, 2020 N.J. Super. LEXIS 1192 (App. Div. 2020). Counsel further contended that to the extent that the request sought criminal investigatory records, same would be exempt from disclosure under OPRA. N.J.S.A. 47:1A-1.1; N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017). Counsel stated that notwithstanding the above, the following responsive records “were publicly available” and are being disclosed accordingly:

1. City of Asbury park Emergency Declaration Proclamation.
2. Photograph of rocks thrown at police officers.
3. Screenshot depictions of Complainant’s client and his attire during the protest.
4. Body-worn camera (“BWC”) footage of an Asbury Park Police Department (“APPD”) officer.
5. BWC footage of an APPD officer.
6. Complainant Client’s criminal summons.
7. Complainant Client’s “Request to Dismiss Summons.”
8. Screenshot depictions of visibly identified members of the press.

Counsel stated that the MCPO also obtained and reviewed BWC footage of three (3) officers, which could be accessed through three (3) specific links. Counsel further stated that although police narratives were disclosed to the Complainant in response to prior OPRA requests, they are also attached to this response. Counsel finally stated that the witness interviews and any additional photographs not disclosed were obtained during the ensuing IA investigation and are thus exempt from disclosure. N.J.S.A. 47:1A-9.

On July 27, 2020, Custodian’s Counsel e-mailed the Complainant advising that the MCPO alerted him to a phone call wherein the Complainant asked when he would receive responsive records. Counsel noted that he sent his response to the Complainant via U.S. mail, as requested, on July 23, 2020. Counsel further noted that although the Complainant did not include an e-mail address in his OPRA request, he obtained Complainant’s law firm general e-mail address and sent his response electronically on the same day. Counsel noted that he was also resending that response to the Complainant’s specific e-mail address, which he received earlier in the day.

Denial of Access Complaint:

On September 16, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the subject OPRA request resulted from the arrest of a journalist in Asbury park on June 1, 2020 that led to the MCPO releasing “Investigative Findings: Asbury Park Officers Reasonably Believed Reporter Was a Protester Failing to Disperse” (“Findings”)⁵ to the public on July 8, 2020. The Complainant contended that the Custodian unlawfully denied access to multiple records, either under the IAPP or criminal investigatory exemptions or through failing to address their existence.

⁵ <http://mcponj.org/2020/07/08/investigative-findings-asbury-park-officers-reasonably-believed-reporter-was-a-protester-failing-to-disperse/>.

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Regarding witness interviews, the Complainant disputed that they were exempt under the IAPP because some were directly quoted in the Findings. The Complainant argued that this extensive “shar[ing]” waived the MCPO’s ability to assert the IAPP exemption. IAPP at ¶ 9.6.1(c). The Complainant further argued that the MCPO could not rely on the IAPP “where [it] seeks to use the privileged information for [its] own benefit without permitting the adversary to obtain the information.” Sicpa N. Atl. V. Donaldson Enter., Inc., 179 N.J. Super. 56, 62 (March 2, 1981).

The Complainant next argued that the MCPO disclosed BWC footage for two (2) officers but did not disclose their narratives. The Complainant also argued that the MCPO disclosed narratives from two (2) other officers but did not include their BWC footage. The Complainant also argued that the MCPO failed to disclose both the narrative and BWC footage from the officer that competed the complaint summonses. The Complainant also noted that the link to “Exhibit 7” in the Findings, which is supposed to link to BWC, is a broken link. The Complainant finally contended that the MCPO failed to identify whether any record containing the “names of the 21 people” interviewed existed; rather, access was simply denied.

Statement of Information:⁶

On February 4, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 15, 2020. The Custodian certified that her search included obtaining all documents from the MCPO’s Professional Responsibility Office and Information Technology Department. The Custodian certified that Custodian’s Counsel responded in writing on her behalf on July 23, 2020 disclosing fourteen (14) records and denying access to any additional records under the IAPP and criminal investigatory exemptions.

The Custodian stated that the background for this OPRA request involved a protest in Asbury Park on June 1, 2020. The Custodian stated that the protest was scheduled to end around 8:00pm due to a curfew that did not apply to credentialed members of the media. The Custodian stated that following curfew, approximately 200 individuals refused to comply with curfew and the situation deteriorated after 10:00pm. The Custodian averred that during that time, APPD officers arrested the Complainant’s client, among several others, and issued him a summons and released him. The Custodian noted that it was not until several hours later that APPD realized he was a credentialed member of the media. The Custodian noted that upon learning this fact, charges against Complainant’s client were dismissed.

The Custodian stated that the incident prompted the MCPO to open an IA investigation on June 2, 2020. The Custodian stated that as part of the investigation, the MCPO reviewed BWC footage, social media footage, and interviewed twenty-one (21) individuals (including fourteen (14) police officers and Complainant’s client). The Custodian averred that the MCPO concluded that the arresting officers acted reasonably and published its Findings on July 8, 2020. The Custodian noted that therein, the MCPO set forth its reasons for the conclusion, as well as indicating that in two (2) instances, BWC cameras were not activated in potential violation of APPD standard operating procedures. The Custodian further noted that the Attorney General’s

⁶ On September 23, 2020, this complaint was referred to mediation. On January 15, 2021, this complaint was referred back to the GRC for adjudication on January 15, 2021.

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Office of Public Integrity and Accountability reviewed the Findings prior to release and agreed with the conclusions.

The Custodian initially argued that a plain reading of the subject OPRA request supports that it was invalid due to vague and overly broad language. The Custodian contended that the Complainant's request failed to any specific records and instead sought "materials, and/or information, in whatever form . . ." The Custodian asserted that the request simply sought access to all records related to a particular topic, the Findings, and would have required her to make "value judgements as to which documents . . . could conceivably be responsive." MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 237 (App. Div. 2015). The Custodian argued that notwithstanding that she could have denied the request outright, she attempted to respond to same in good faith and in the interest of transparency.

The Custodian further certified that, contrary to the Complainant's assertion of missing narrative, BWC footage, and list of names, the MCPO produced all disclosable records it obtained in furtherance of the IA investigation. The Custodian affirmed that the BWC footage contained in the Findings as "Exhibit 7" was included as one of the three (3) links to the provided in Counsel's response letter. The Custodian contended that the MCPO could not disclose any other records that it did not possess, such as the alleged missing BWC footage⁷ and narratives. The Custodian also argued that she was not required to create records, such as a list of twenty-one (21) names, to fulfill the OPRA request. The Custodian thus argued that no violation of OPRA occurred with respect to those records the Complainant alleged he was unlawfully denied. The Custodian noted that the Complainant erroneously concluded that records were unlawfully denied and filed the instant complaint instead of seeking confirmation of their non-existence.

The Custodian also argued that she lawfully denied access to the requested witness statements under the IAPP. N.J.S.A. 47:1A-9; N.J.S.A. 52:17B-98; IAPP at ¶ 9.6.1; O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 379 (App. Div. 2009) (holding that the Attorney General's guidelines and directives have the force of law). The Custodian asserted that contrary to the Complainant claim that the MCPO waived its confidentiality by releasing certain information in the Findings,⁸ the IAPP contains no such waivers. The Custodian argued that instead, the IAPP contains discretionary circumstances under which such records can be disclosed with an emphasis on granting access "sparingly, given the purpose of the internal affairs process and the nature of many of the allegations against officers." IAPP at ¶ 9.6.2. The Custodian further contended that applying such a waiver standard would affect detrimentally the voluntary public release of IA investigative findings thus harming the intended "dual public policy" of transparency and confidentiality.

⁷ The Custodian noted that in September 2020, APPD provided the MCPO with BWC footage from one officer it previously thought not in existence. The Custodian further noted that this footage was disclosed to the Complainant's client on September 28, 2020 in response to another OPRA request received after the filing of this complaint.

⁸ The Custodian noted that the Complainant's client is also asserting this claim in a complaint filed with the Superior Court after being denied access to the same witness interviews, among other records, in response to his September 28, 2020 OPRA request. Martinez v. Monmouth Cnty. Prosecutor's Office, Docket No. MON-L-3846-20. The Custodian noted the client is being represented in that action by the Complainant.

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The Custodian additionally noted that the Complainant failed to bear the shifted burden of proof that is required when asserting the waiver issue. Brown v. Royal Battery Corp., 181 N.J. Eq. 354, 349 (Ch. 1942). See also Rivera v. Union Cnty. Prosecutor's Office, 2020 N.J. Super. Unpub. LEXIS 1192 (App. Div. 2020) (reversing the trial court's decision by rejecting plaintiff's "waiver" argument and holding that IA records were exempt from disclosure under the IAPP). The Custodian averred that the witness interviews here were clearly collected as part of the IA process and are covered under the applicable exemption.

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.

Initially, the GRC notes that in situations where a request was overly broad on its face but the custodian was able to locate records, the Council has followed Burke v. Brandes, 429 N.J. Super. 169, 177 (App. Div. 2012) (holding 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"), 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).

Here, the Complainant sought access to generic "documents, materials, and/or information, in whatever form," related to the Findings. The Council has routinely found similarly worded requests to be invalid. See *e.g.* Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). The Custodian, through Counsel, initially responded that the subject request was invalid, but that multiple responsive records were identified. Based on this, the MCPO disclosed multiple records and withheld access to other based on the IAPP and criminal investigatory exemptions. Thus, although the subject request was invalid on its face, Burke controls and the GRC will adjudicate this complaint accordingly.

Witness Interviews:

The Appellate Division has held that Attorney General Guidelines have the force of law for police entities. See O'Shea, 410 N.J. Super. at 382. In particular, the IAPP is bound upon all law enforcement agencies in New Jersey pursuant to statute. See N.J.S.A. 40A:14-181. Further, the IAPP explicitly provides that "[t]he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information." IAPP at 9.6.1 (August 2020). Consistent with the IAPP, the Council held in Wares v. Passaic Cnty. Prosecutor's Office, GRC Complaint No. 2014-330 (June 2015) that internal affairs records are not subject to access under OPRA (citing N.J.S.A. 47:1A-9). See also Camarata v. Essex Cnty.

Prosecutor's Office, GRC Complaint No. 2014-127 (June 2015). As it relates to the potential waiver of the IAPP exemption, the Rivera, 2020 N.J. Super. Unpub. LEXIS 1192 court affirmatively rejected such a premise. Id. at 24.

In the instant matter, the Complainant's OPRA request sought generic documents and records related to the MCPO's IA investigation stemming from the arrest of his client. The Custodian responded through Counsel disclosing multiple records but denying access to fourteen (14) recorded witness interviews comprising officers from multiple jurisdictions and a private individual. The Complainant argued in the Denial of Access Complaint that MCPO waived any IAPP confidentiality by substantively including information and details from the interviews (citing IAPP at ¶ 9.6.1(c) and Sicpa, 179 N.J. Super. 56). In the SOI, the Custodian maintained her position that the responsive interviews were exempt under the IAPP and that the waiver issue did not apply here. The Custodian also argued that even such an exception applied, the Complainant failed to bear his burden of proving that the waiver occurred.

In reviewing all available facts and arguments, the GRC is persuaded that the Custodian lawfully denied access to the responsive witness interviews for reasons substantially discussed in the Rivera court's analysis of the waiver issue. First and foremost, the IAPP exempts access to "the contents of an internal investigation case file . . ." with limited exceptions to include discretion from a prosecutor or the Attorney General. IAPP at ¶ 9.6.1. However, none of those exceptions apply a waiver where details of an investigation are shared with the public. The GRC is also compelled to agree that such a standard would adversely affect a public agency's willingness to share the details of an IA investigation with the public. Further, the IAPP's discretion exception supports the "dual public policy" issue raised by the Custodian and in no way indicates that utilizing same amounts to a full waiver of the IA file or its contents. Also, Sicpa 179 N.J. Super. 56 is not applicable here primarily because that issue involved an employee/employer confidentiality issue years before OPRA's enactment. Thus, no violation of OPRA has occurred here.

Therefore, the Custodian lawfully denied access to the requested witness interviews, which are exempt from disclosure under the IAPP. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9; O'Shea, 410 N.J. Super. 371; Camarata, GRC 2014-127. Further, the IAPP does not support that the MCPO waived any privilege by disclosing investigation details in the Findings. IAPP at ¶ 9.6.1; Rivera, 2020 N.J. Super. Unpub. LEXIS 1192.

Remaining Disputed Records:

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian's certification that all such records were provided to the complainant. The Council held that the custodian's certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian's burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015). However, in Macek v. Bergen Cnty. Sheriff's Office, GRC Complaint No. 2017-156, *et seq.* (Interim Order dated June 25, 2019), the Council held that evidence contained in the record suggested that additional

responsive records may exist. Based on this, the Council ordered the Custodian to perform another search and submit a certification regarding the results of that search.

Here, the Complainant contended in his Denial of Access Complaint that the Custodian failed to provide certain BWC footage, narrative reports, and “the names of 21 people interviewed” as part of the MCPO’s IA investigation without providing any explanation for the denial. The Complainant also noted that a link to BWC footage identified as “Exhibit 7” included in the Findings was no longer operational. In the SOI, the Custodian certified that she disclosed all narratives and BWC footage that existed in MCPO’s possession. The Custodian further affirmed that the alleged missing BWC footage and narratives either did not exist or were not maintained or received by the MCPO. The Custodian also noted that there was no single document listing the names of all individuals interviewed and that she was not required to create such a record, notwithstanding that the information or records containing same would be exempt under the IA exemption. Finally, the Custodian affirmed that she properly provided access to the BWC footage through additional links in the response letter: one of those links included a second access option to the footage identified as Exhibit 7 contained in the Findings.

Having reviewed the evidence of record contained herein, the GRC determines that this complaint more closely mirrors the facts in Danis, GRC 2009-156. That is, the Custodian initially disclosed responsive e-mails and certified in the SOI that no additional records existed or were not in the MCPO’s possession at the time of the subject OPRA request. Further, the evidence of record supports the Custodian’s certification regarding the linked BWC footage, which was included as three (3) separate links to the MCPO’s file-sharing service. Additionally, the Complainant provided no evidence to refute the Custodian’s certification.

Accordingly, the Custodian did not unlawfully deny access to any records responsive to the Complainant’s OPRA request not otherwise exempt from disclosure because she certified, and the record reflects, that she disclosed all that existed. N.J.S.A. 47:1A-6; Danis, GRC 2019-156.

Prevailing Party Attorney’s Fees

OPRA provides that:

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

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

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

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

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

[Mason 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, who identified that he was representing his client, filed the instant complaint contending that the Custodian unlawfully denied him access to multiple records utilized in the IA investigation that resulting in the Findings. However, a review of the evidence here has shown that: 1) the Custodian lawfully denied access to the responsive witness interviews under the IAPP; and 2) that all additional responsive records that existed in the MCPO’s possession at the time of the OPRA request were disclosed to the Complainant prior to the filing of this complaint. Thus, the relief sought here was not achieved and the Complainant is not a prevailing party entitled to an award of attorney’s fees.

Therefore, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian’s conduct. Teeters, 387 N.J. Super. 432. Additionally, no factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. 51. Specifically, the Custodian lawfully denied access to the requested witness interviews and disclosed all other records that existed. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian lawfully denied access to the requested witness interviews, which are exempt from disclosure under the Internal Affairs Policy and Procedures. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9; O’Shea v. Twp. of West Milford, 410 N.J. Super. 371, 379 (App. Div. 2009); Camarata v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2014-127 (June 2015). Further, the Internal Affairs Policy and Procedures does not support that the Monmouth County Prosecutor’s Office waived any privilege by disclosing investigation details in the Findings. Internal Affairs Policy and Procedures at ¶ 9.6.1; Rivera v. Union Cnty. Prosecutor’s Office, 2020 N.J. Super. Unpub. LEXIS 1192 (App. Div. 2020).
2. The Custodian did not unlawfully deny access to any records responsive to the Complainant’s OPRA request not otherwise exempt from disclosure because she certified, and the record reflects, that she disclosed all that existed. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
3. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian’s conduct. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, no factual causal nexus

exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the Custodian lawfully denied access to the requested witness interviews and disclosed all other records that existed. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51.

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