



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. 2020-44

v.

Township of Lacey (Ocean)
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 parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant’s Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

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

Final Decision Rendered by the
Government Records Council
On The 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 of¹
African American Data and Research Institute)
Complainant**

GRC Complaint No. 2020-44

v.

**Township of Lacey (Ocean)²
Custodial Agency**

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

1. Summonses and complaints that were prepared by the Lacey Township Police Department (“LPD”) relating to each one of the defendants listed in the Drug Recognition Evaluation/Expert (“DRE”) Rolling Logs.
2. Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) complaints prepared and filed by the LPD from January 2019 through present.
3. Drug possession complaints prepared and filed by the LPD from January 2019 through present.
4. Drug paraphernalia complaints and summonses prepared by the LPD from January 2019 through present.

Custodian of Record: Veronica Laureigh
Request Received by Custodian: November 25, 2019
Response Made by Custodian: January 15, 2020
GRC Complaint Received: February 24, 2020

Background

July 27, 2021 Council Meeting:

At its July 27, 2021 public meeting, the Council considered the July 20, 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, found that:

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

² Represented by Christopher J. Connors, Esq., of Dasti, Murphy, McGuckin, et. al (Forked River, N.J.).

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

1. The Custodian complied with the Council's June 29, 2021 Interim Order. Specifically, the Custodian provided the Complainant with the responsive records and provided a certified confirmation of compliance to the Executive Director within the prescribed period.
2. The Custodian unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. However, the Custodian complied with the Council's June 29, 2021 Interim Order by providing the responsive records to the Complainant. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. Pursuant to the Council's June 29, 2020 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 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, 76 (2008). Specifically, the Custodian was ordered to produce the responsive records maintained by Lacey Township Police Department. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Procedural History:

On July 28, 2021, the Council distributed its Interim Order to all parties. On August 26, 2021, the GRC informed the parties that the deadline to notify the GRC of a settlement for counsel fees expired on August 25, 2021 and provided a deadline of September 23, 2021 for the Complainant to submit a fee application.

On September 7, 2021, the Complainant e-mailed the GRC informing that the Custodian was on vacation and was waiting to hear back regarding the matter. The Complainant also stated that a two (2) week extension was needed. That same day, the GRC e-mailed the Complainant stating that the new deadline for the parties would be October 7, 2021.

On October 14, 2021, the GRC again informed the parties that the deadline had expired and provided a new deadline for the Complainant to submit a fee application. On November 4, 2021, the Complainant notified the GRC that the parties have resolved the issue of counsel fees.

On November 12, 2021, the GRC responded to the parties inquiring as to whether the Township of Lacey (“Township”) formally approved a settlement between the parties. That same day, Custodian’s Counsel submitted a letter to the GRC stating that the parties settled the matter in the amount of \$4,000.00, and that the Township Committee will adopt a formal resolution authorizing payment at its next meeting on November 23, 2021.

Analysis

Compliance

At its July 27, 2021 meeting, the Council determined that the Complainant was a prevailing party entitled to an award of reasonable attorney’s fees. The Council thus ordered that the “parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days.” The Council further ordered that the parties notify of any settlement prior to the expiration of the twenty (20) business day time frame. Finally, the Council ordered that, should the parties not reach an agreement, the Complainant’s Counsel would be required to “submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.”

On July 28, 2021, the Council distributed its Interim Order to all parties; thus, the parties’ response was due by close of business on August 25, 2021. On August 26, 2021, the GRC informed the parties that the deadline to notify the GRC of a settlement for counsel fees expired on August 25, 2021 and provided a deadline for the Complainant to apply for counsel fees. On September 7, 2021, the Complainant requested an extension of time for the parties to resolve the matter. The GRC provided a new deadline of October 7, 2021.

On October 14, 2021, the GRC again notified the parties that the deadline had expired. On November 4, 2021, the Complainant responded to the GRC stating that the parties have resolved the matter. On November 12, 2021, the GRC asked the parties whether the Township had formally approved the settlement. That same day, Counsel responded to the GRC stating that the parties have settled the matter and that formal approval would take place on November 23, 2021.

Accordingly, the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant’s Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Council dismiss this complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant’s Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Prepared By: Samuel A. Rosado
Staff Attorney

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

July 27, 2021 Government Records Council Meeting

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

Complaint No. 2020-44

v.

Township of Lacey (Ocean)
Custodian of Record

At the July 27, 2021 public meeting, the Government Records Council (“Council”) considered the July 20, 2021 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s June 29, 2021 Interim Order. Specifically, the Custodian provided the Complainant with the responsive records and provided a certified confirmation of compliance to the Executive Director within the prescribed period.
2. The Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. However, the Custodian complied with the Council’s June 29, 2021 Interim Order by providing the responsive records to the Complainant. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. Pursuant to the Council’s June 29, 2020 Interim Order, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 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, 76 (2008). Specifically, the Custodian was ordered to produce the responsive records maintained by Lacey Township Police Department. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree**



on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.

Interim Order Rendered by the
Government Records Council
On The 27th Day of July 2021

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: July 28, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Rotimi Owoh, Esq. (On Behalf of¹
African American Data and Research Institute)
Complainant**

GRC Complaint No. 2020-44

v.

**Township of Lacey (Ocean)²
Custodial Agency**

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

1. Summonses and complaints that were prepared by the Lacey Township Police Department (“LPD”) relating to each one of the defendants listed in the Drug Recognition Evaluation/Expert (“DRE”) Rolling Logs.
2. Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) complaints prepared and filed by the LPD from January 2019 through present.
3. Drug possession complaints prepared and filed by the LPD from January 2019 through present.
4. Drug paraphernalia complaints and summonses prepared by the LPD from January 2019 through present.

Custodian of Record: Veronica Laureigh
Request Received by Custodian: November 25, 2019
Response Made by Custodian: January 15, 2020
GRC Complaint Received: February 24, 2020

Background

June 29, 2021 Council Meeting:

At its June 29, 2021 public meeting, the Council considered the June 22, 2021 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The Custodian may have unlawfully denied access to the requested complaints and summonses responsive to the Complainant’s November 25, 2019 OPRA request.

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

² Represented by Christopher J. Connors, Esq., of Dasti, Murphy, McGuckin, et. al (Forked River, NJ).

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

- N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). Thus, the Custodian shall perform a search for the responsive complaints and summonses kept and maintained by the Lacey Township Police Department. Should the Custodian not locate any such records, she must certify to this fact. Also, should the Custodian determine that a special service charge is warranted thereafter, she must provide the Complainant with the amount of the special service charge required to purchase the requested records.
2. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order by disclosing the responsive records with any appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously providing certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵**
 3. **In the event the Custodian determines that a special service charge is applicable, the Custodian shall complete the GRC's 14-point analysis⁶ and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council's Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Executive Director certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with R. 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**
 4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

⁴ "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."

⁵ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium.

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

5. 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 30, 2021, the Council distributed its Interim Order to all parties. On July 6, 2021, the Custodian e-mailed the Complainant providing responsive records as separate attachments. On July 12, 2021, the GRC responded to the Custodian stating that some of the attachments were unable to be opened and could not confirm whether a certified confirmation of compliance was included with the responsive records. That same day, the Custodian responded to the GRC providing new attachments containing the responsive records. On July 15, 2021, the Custodian provided a certified confirmation of compliance as an addendum to her July 6, 2021 correspondence.

Analysis

Compliance

At its June 29, 2021 meeting, the Council ordered the Custodian to locate and provide access to the requested records or provide an estimated special service charge. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On June 30, 2021, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on July 8, 2021, accounting for the Independence Day holiday.

On July 6, 2021, the third (3rd) business day after receipt of the Council's Order, the Custodian e-mailed the Complainant, providing copies of the responsive records as attachments. However, some of the attachments were unable to be opened to confirm the records and that a certified confirmation of compliance was provided. On July 12, 2021, Custodian resubmitted her response to the Complainant containing the responsive records. On July 15, 2021, the Custodian submitted a certified confirmation of compliance to the Executive Director as an addendum to her July 6, 2021 correspondence.

Therefore, the Custodian complied with the Council's June 29, 2021 Interim Order. Specifically, the Custodian provided the Complainant with the responsive records and provided a certified confirmation of compliance to the Executive Director within the prescribed period.

Knowing & Willful

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

and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

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

In the matter before the Council, the Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. However, the Custodian complied with the Council’s June 29, 2021 Interim Order by providing the responsive records to the Complainant. 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 complaints and summonses prepared by LPD pertaining to drug paraphernalia, drug possession, DUI/DWI offenses, and DRE Rolling Logs. The Custodian asserted the Township of Lacey provided the responsive records. The Complainant then filed the instant complaint asserting that the provided records were not responsive and that LPD had access to the responsive records at issue.

In determining whether the Complainant is a prevailing party entitled to attorney's fees, the GRC is satisfied that the evidence of record supports a conclusion in the affirmative. In accordance with the Council's June 29, 2021 Interim Order, the Custodian was ordered to produce responsive records maintained by LPD, which was the Complainant's desired result in filing the instant complaint. Teeters, 387 N.J. Super. at 432. Thus, a causal nexus exists between this complaint and the change in the Custodian's conduct. Mason 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney's fees.⁷

Therefore, pursuant to the Council's June 29, 2021 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters, 387 N.J. Super. 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 was ordered to produce the responsive records maintained by LPD. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's June 29, 2021 Interim Order. Specifically, the Custodian provided the Complainant with the responsive records and provided a certified confirmation of compliance to the Executive Director within the prescribed period.
2. The Custodian unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. However, the Custodian complied with the Council's June 29, 2021 Interim Order by providing the responsive records to the Complainant. Additionally, the

⁷ 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).

evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

3. Pursuant to the Council's June 29, 2020 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 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, 76 (2008). Specifically, the Custodian was ordered to produce the responsive records maintained by Lacey Township Police Department. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Prepared By: Samuel A. Rosado
Staff Attorney

July 20, 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

June 29, 2021 Government Records Council Meeting

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

Complaint No. 2020-44

v.

Township of Lacey (Ocean)
Custodian of Record

At the June 29, 2021 public meeting, the Government Records Council (“Council”) considered the June 22, 2021 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian may have unlawfully denied access to the requested complaints and summonses responsive to the Complainant’s November 25, 2019 OPRA request. N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). Thus, the Custodian shall perform a search for the responsive complaints and summonses kept and maintained by the Lacey Township Police Department. Should the Custodian not locate any such records, she must certify to this fact. Also, should the Custodian determine that a special service charge is warranted thereafter, she must provide the Complainant with the amount of the special service charge required to purchase the requested records.
2. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council’s Interim Order by disclosing the responsive records with any appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously providing certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,¹ to the Executive Director.²**
3. **In the event the Custodian determines that a special service charge is applicable, the Custodian shall complete the GRC’s 14-point analysis³ and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council’s Interim**

¹ "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."

² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium.

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

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

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 29th Day of June 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: June 30, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 29, 2021 Council Meeting**

**Rotimi Owoh, Esq. (On Behalf of¹
African American Data and Research Institute)
Complainant**

GRC Complaint No. 2020-44

v.

**Township of Lacey (Ocean)²
Custodial Agency**

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

1. Summonses and complaints that were prepared by the Lacey Township Police Department (“LPD”) relating to each one of the defendants listed in the Drug Recognition Evaluation/Expert (“DRE”) Rolling Logs.
2. Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) complaints prepared and filed by the LPD from January 2019 through present.
3. Drug possession complaints prepared and filed by the LPD from January 2019 through present.
4. Drug paraphernalia complaints and summonses prepared by the LPD from January 2019 through present.

Custodian of Record: Veronica Laureigh
Request Received by Custodian: November 25, 2019
Response Made by Custodian: January 15, 2020
GRC Complaint Received: February 24, 2020

Background⁴

Request and Response:

On November 25, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 5, 2019, Cathy D’Anduono responded on the Custodian’s behalf seeking a ten (10) day extension of time to respond. On December 17, 2019, Ms. D’Anduono requested another ten (10) day extension to

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

² Represented by Christopher J. Connors, Esq., of Dasti, Murphy, McGuckin, et. al (Forked River, 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.

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respond. On January 15, 2020, Lisa Monbleau responded in writing on the Custodian's behalf providing responsive records to the Complainant. The Complainant replied that same day, asking whether the Township of Lacey ("Township") intended to comply with the OPRA request.

Denial of Access Complaint:

On February 24, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that New Jersey police departments have direct access to eCDR as well as the ATS/ACS database. The Complainant argued that police departments did not need the assistance or permission of any court to access the databases containing the responsive records.

The Complainant also asserted that the Records Retention Schedule for both Municipal Police Departments and Municipal Prosecutors required retention of the requested records. The Complainant also contended that several other police departments have retrieved, printed, and furnished the Complainant with the requested records. The Complainant therefore requested the GRC compel compliance with the OPRA request and to award counsel fees.

Statement of Information:

On March 9, 2020, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on November 25, 2019. The Custodian certified that she requested extensions of time on December 5, 2019 and December 17, 2019. The Custodian certified that the Township responded on January 15, 2020, providing responsive records.

The Custodian maintained that the Township provided responsive records on January 15, 2020 and included copies of same with the SOI.

Additional Submissions:

On March 12, 2020, the Complainant filed a letter brief in opposition to the Custodian's SOI. Therein, the Complainant asserted that his request items sought summonses and complaints. The Complainant argued that instead the Custodian provided records entitled "Dynamic Arrest Reports," and "Citations by Total Type." The Complainant argued that the records were not the requested summonses or complaints and included examples of same for comparison.

The Complainant also argued that the because LPD officers "made" the complaints upon issuing them, they qualified as government records under OPRA. Further, the Complainant contended that according to an Attorney General Directive, if the complaints were unable to be entered electronically, police officers were required to prepare the complaints manually and then transmitted to the municipal court for filing.

The Complainant further argued that police departments in the State were required to retain summonses and complaints until thirty (30) days after disposition of same.⁵ The Complainant further asserted that municipalities were required to retain these records for at least fifteen (15) years after disposition. The Complainant argued that because LPD officers and municipal prosecutors were City employees, their records were subject to access under OPRA and should have been disclosed accordingly. The Complainant noted that if the responsive records were in storage or otherwise unavailable, the Custodian had an obligation to extend the response time frame but failed to do so.

The Complainant also argued that in accordance with Paff v. Galloway Twp., 229 N.J. 340 (2017), agencies were required to provide access to electronically stored information. The Complainant asserted that eCDR was set up by the New Jersey State Police (“NJSP”) in cooperation with the Administrative Office of the Courts (“AOC”), and that eCDR was a separate system from eCourts. Notwithstanding, the Complainant contended that since LPD officers had direct access to the database maintaining the records and could retrieve and print the records without any assistance, help, or permission from the Court, they were obligated to retrieve same.

The Complainant further argued that he specifically requested records that were prepared by the police department, and not the judiciary. Additionally, the Complainant asserted that R. 1:38 was inapplicable since the request was made directly to an executive branch agency. The Complainant asserted that they had the right to decide where to send their request to the judiciary or executive branch.

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

The Complainant also argued that LPD should not be allowed to erect technological barriers as means to deny access to government records. The Complainant contended that the complaints should remain subject to access under OPRA regardless of whether they were prepared manually in the past but now entered electronically. The Complainant asserted that the standard under OPRA was not “actual possession” but rather “access” to the requested records, citing Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), and Verry v. Franklin Fire Dist. No. 1, 230 N.J. 285 (2017).

The Complainant also noted that several other judges have ruled that summonses and complaints prepared by police officers were subject to disclosure and awarded counsel fees as a result. The Complainant asked the GRC to take notice of the decisions in favor of AADARI in

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

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AADARI v. Town of West New York, Docket No. HUD-L-31-20, and AADARI v. City of Millville, Docket No. CUM-L-712-18.⁶

On May 19, 2021, the GRC submitted a request for additional information from the Custodian. Specifically, the GRC asked the Custodian:

1. Do the [Township's] police officers keep or maintain physical copies of the requested summonses and complaints upon submission to the [Court]?
2. Does the [Township's] municipal prosecutor continue to keep or maintain physical copies of summonses and complaints as part of a "Municipal Prosecutor's Case File"?
3. Does the [Township] keep or maintain physical copies of the requested summonses and complaints in archives or storage?

On May 27, 2021, the Custodian responded to the GRC's request for additional information. Regarding this first question, the Custodian certified that LPD did not have a policy requiring officers to make and keep copies of criminal complaints, summonses, and warrants. The Custodian certified that the Township of Lacey Municipal Court ("Court") was required to keep copies and have a separate process to obtain records. Regarding the second question, the Custodian certified that the municipal prosecutor maintained copies of summonses and complaints while cases were pending, and once closed the documents were shredded.

Regarding the final question, the Custodian certified that LPD maintained the "blue" copies of summonses while the issuing officer maintained the "yellow" copy, although the Township did not require officers to retain copies by policy. The Custodian certified that LPD possessed "blue" copies of the traffic summonses going back to January 1, 2018; prior to that date, every summons going back to 2008 had been entered in the in-house CAD system, and thus there were no paper copies.

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.

Additionally, the Council has previously held that criminal complaints and summonses are subject to disclosure. Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004); see also Mawhinney v. Egg Harbor City Police Dep't (Atlantic), GRC Complaint No. 2015-85 (January 2016).

⁶ This New Jersey Supreme Court recently decided in favor of AADARI in Simmons v. Mercado, ___ N.J. ___ (2021).

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The GRC also notes that the facts in this matter are virtually identical to a previous complaint adjudicated in Owoh, Esq. (O.B.O. AADARI) v. Twp. of Lacey (Ocean), GRC Complaint No. 2018-193 (Interim Order dated July 28, 2020). There, the Complainant sought the same records from the Custodian, with the exception being the identified period. The GRC requested additional information in the same inquiries made in the instant matter. The Custodian responded with the same answers, notably that LPD maintained the “blue” copies of the requested summonses dated in part within the requested period. The Council ordered the Custodian to search for and provide the responsive records to the Complainant. On August 5, 2020, the Custodian provided the Complainant with the requested summonses and complaints.

Upon review, the GRC is persuaded that the Custodian may have unlawfully denied access. The Custodian asserted that the requested records were provided to the Complainant. However, the evidence of record demonstrates that the provided records were not the requested summonses and complaints sought by the Complainant. Furthermore, the Custodian’s production of the requested summonses and complaints pertaining to Lacey, GRC 2018-293, as well as her past and present certifications should have resulted in the Custodian providing the requested summonses and complaints in response to the instant matter. The evidence of record demonstrates that LPD maintained the responsive complaints and summonses at the time of the Complainant’s OPRA request.

Accordingly, the Custodian may have unlawfully denied access to the requested complaints and summonses responsive to the Complainant’s November 25, 2019 OPRA request. N.J.S.A. 47:1A-6; Merino, GRC 2003-110. Thus, the Custodian shall perform a search for the responsive complaints and summonses kept and maintained by LPD. Should the Custodian not locate such records, she must certify to this fact. Also, should the Custodian determine that a special service charge is warranted thereafter, she must provide the Complainant with the amount of the special service charge required to purchase the requested summonses and complaints.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

Prevailing Party Attorney’s Fees

The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian’s compliance with the Council’s Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian may have unlawfully denied access to the requested complaints and summonses responsive to the Complainant’s November 25, 2019 OPRA request. N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110

(July 2004). Thus, the Custodian shall perform a search for the responsive complaints and summonses kept and maintained by the Lacey Township Police Department. Should the Custodian not locate any such records, she must certify to this fact. Also, should the Custodian determine that a special service charge is warranted thereafter, she must provide the Complainant with the amount of the special service charge required to purchase the requested records.

2. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order by disclosing the responsive records with any appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously providing certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸**
3. **In the event the Custodian determines that a special service charge is applicable, the Custodian shall complete the GRC's 14-point analysis⁹ and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council's Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Executive Director certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with R. 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
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Prepared By: Samuel A. Rosado
Staff Attorney

June 22, 2021