



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**

**January 25, 2022 Government Records Council Meeting**

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

Complaint No. 2020-55

v.

Edison Police Department (Middlesex)  
Custodian of Record

At the January 25, 2022 public meeting, the Government Records Council (“Council”) considered the January 18, 2022, Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that 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 25<sup>th</sup> Day of January 2022

Robin Berg Tabakin, Esq., Chair  
Government Records Council

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

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: January 27, 2022**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

*Prevailing Party Attorney's Fees*  
**Supplemental Findings and Recommendations of the Executive Director  
January 25, 2022 Council Meeting**

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

**GRC Complaint No. 2020-55**

v.

**Edison Police Department (Middlesex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:<sup>3</sup>

1. Record 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.
2. Record 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:** Cheryl Russomanno  
**Request Received by Custodian:** January 31, 2020  
**Response Made by Custodian:** February 20, 2020  
**GRC Complaint Received:** February 27, 2020

**Background**

December 14, 2021 Council Meeting:

At its December 14, 2021 public meeting, the Council considered the December 7, 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 Custodian complied with the Council's April 27, 2021 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

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

<sup>2</sup> Represented by Ted J. Del Guercio, III, Esq., of McManimon, Scotland & Baumann, LLC (Roseland, NJ).

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

2. The Custodian provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-(g) and unlawfully denied access to the requested personnel information. However, the Custodian complied with the Council's April 27, 2021 Interim Order by providing the Complainant with the requested information. 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 April 27, 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 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 personnel information. 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 December 15, 2021, the Council distributed its Interim Order to all parties. On January 3, 2022, the Complainant's Counsel notified the GRC that the parties have resolved the issue of counsel fees per the Interim Order. That same day, the Custodian's Counsel responded to the GRC confirming the resolution and stated that the Township of Edison ("Township") would formally approve the settlement on January 5, 2022. On January 6, 2022, the GRC inquired as to whether the Township approved the settlement. That same day, Custodian's Counsel responded to confirm that the Township approved the settlement and provided a copy of the resolution.

#### Analysis

#### Compliance

At its December 14, 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 December 15, 2021, the Council distributed its Interim Order to all parties; thus, the parties' response was due by close of business on January 14, 2022. On January 3, 2022, Complainant's Counsel notified the GRC that the parties resolved the issue of counsel fees. That same day, Custodian's Counsel also notified the GRC confirming that the parties have settled the issue of counsel fees and that the Township would formally approve the settlement on January 5, 2022. On January 6, 2022, Custodian's Counsel confirmed that the Township formally approved the settlement and provided a copy of the signed resolution.

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

January 18, 2022



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

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**INTERIM ORDER**

**December 14, 2021 Government Records Council Meeting**

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

Complaint No. 2020-55

v.

Edison Police Department (Middlesex)  
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:

1. The Custodian complied with the Council’s April 27, 2021 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian provided an insufficient response to the Complainant’s request pursuant to N.J.S.A. 47:1A-(g) and unlawfully denied access to the requested personnel information. However, the Custodian complied with the Council’s April 27, 2021 Interim Order by providing the Complainant with the requested information. 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 April 27, 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 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 personnel information. 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 14<sup>th</sup> 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 15, 2021**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

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

**GRC Complaint No. 2020-55**

v.

**Edison Police Department (Middlesex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:<sup>3</sup>

1. Record 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.
2. Record 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:** Cheryl Russomanno  
**Request Received by Custodian:** January 31, 2020  
**Response Made by Custodian:** February 20, 2020  
**GRC Complaint Received:** February 27, 2020

**Background**

**April 27, 2021 Council Meeting:**

At its April 27, 2021 public meeting, the Council considered the April 20, 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's response was insufficient because she failed to respond in writing to each individual item contained in the Complainant's January 31, 2020 OPRA request. N.J.S.A. 47:1A-5(g), Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), and Graumann v. Newfield Police Dep't (Gloucester), GRC Complaint No. 2014-314 (May 2015).

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

<sup>2</sup> Represented by Ted J. Del Guercio, III, Esq., of McManimon, Scotland & Baumann, LLC (Roseland, NJ).

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

2. The Custodian unlawfully denied access to the Complainant's January 30, 2020 OPRA request. N.J.S.A. 47:1A-6. Specifically, because the Custodian certified that all Edison Police Department officers had access to eCDR, and Ms. Connell stated that all Edison Police Department officers had access to ATS/ACS, their name, rank, and date of hire should have been provided in accordance with N.J.S.A. 47:1A-10 and Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011). Thus, the Custodian shall provide this information to the Complainant.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>4</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>5</sup> to the Executive Director.<sup>6</sup>**
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 Custodian is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On April 28, 2021, the Council distributed its Interim Order to all parties. On April 29, 2021, the Custodian responded to the Council's Interim Order, providing the Complainant with responsive records via e-mail. On May 3, 2021, the Custodian submitted certified confirmation of compliance to the Executive Director.

#### Analysis

##### Compliance

At its April 27, 2021 meeting, the Council ordered the Custodian to locate and provide the Complainant with the requested personnel information. 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 April 28, 2021, the Council distributed its Interim Order to all parties,

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<sup>4</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>5</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

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



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 May 5, 2021.

On April 29, 2021, the first (1<sup>st</sup>) business day after receipt of the Council's Order, the Custodian provided the Complainant with the requested information. On May 3, 2021, the Custodian submitted certified confirmation of compliance to the Executive Director.

Therefore, the Custodian complied with the Council's April 27, 2021 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

### **Knowing & Willful**

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

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

In the instant matter, the Custodian provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-(g) and unlawfully denied access to the requested personnel information. However, the Custodian complied with the Council's April 27, 2021 Interim Order by providing the Complainant with the requested information. 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 (App. Div. 2006), the Appellate Division held that a complainant is a “prevailing party” if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct. Id. at 432. Additionally, the court held that attorney’s fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

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

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

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

OPRA itself contains broader language on attorney's fees than the former RTKL

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

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

The Court in Mason, further held that:

[R]equestors are entitled to attorney’s fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) “a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved”; and (2) “that the relief ultimately secured by plaintiffs had a basis in law.” Singer v. State, 95 N.J. 487, 495, cert. denied, New Jersey v. Singer, 469 U.S. 832 (1984).

[Id. at 76.]

Here, the Complainant requested the name, rank, and date of hire of each police department employee with access to eCDR and ACS/ATS. The Custodian responded stating that all officers had access to the database systems. The Complainant filed the instant matter stating that the Custodian did not provide the personnel information required under N.J.S.A. 47:1A-10.

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 April 27, 2021 Interim Order, the Custodian was ordered to provide the requested personnel information, 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.<sup>7</sup>

Therefore, pursuant to the Council’s April 27, 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 personnel information. Further, the relief ultimately achieved had a basis in law. Therefore, the

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<sup>7</sup> 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).

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.**

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the Council's April 27, 2021 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-(g) and unlawfully denied access to the requested personnel information. However, the Custodian complied with the Council's April 27, 2021 Interim Order by providing the Complainant with the requested information. 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 April 27, 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 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 personnel information. 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.**

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**

**April 27, 2021 Government Records Council Meeting**

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

Complaint No. 2020-55

v.

Edison Police Department (Middlesex)  
Custodian of Record

At the April 27, 2021 public meeting, the Government Records Council (“Council”) considered the April 20, 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’s response was insufficient because she failed to respond in writing to each individual item contained in the Complainant’s January 31, 2020 OPRA request. N.J.S.A. 47:1A-5(g), Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), and Graumann v. Newfield Police Dep’t (Gloucester), GRC Complaint No. 2014-314 (May 2015).
2. The Custodian unlawfully denied access to the Complainant’s January 30, 2020 OPRA request. N.J.S.A. 47:1A-6. Specifically, because the Custodian certified that all Edison Police Department officers had access to eCDR, and Ms. Connell stated that all Edison Police Department officers had access to ATS/ACS, their name, rank, and date of hire should have been provided in accordance with N.J.S.A. 47:1A-10 and Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011). Thus, the Custodian shall provide this information to the Complainant.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>1</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>2</sup> to the Executive Director.<sup>3</sup>**

<sup>1</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>2</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>3</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the

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 Custodian 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 27<sup>th</sup> Day of April 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: April 28, 2021**

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record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

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

**GRC Complaint No. 2020-55**

v.

**Edison Police Department (Middlesex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:<sup>3</sup>

1. Record 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.
2. Record 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:** Cheryl Russomanno  
**Request Received by Custodian:** January 31, 2020  
**Response Made by Custodian:** February 20, 2020  
**GRC Complaint Received:** February 27, 2020

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

**Request and Response:**

On January 31, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 20, 2020, Maureen Connell responded on the Custodian’s behalf in writing stating that for item No. 1, “[o]n information and belief, every sworn officer of the [Edison Police Department (“EPD”)] has access to [eCDR], as it is the criminal complaint system.” Ms. Connell also stated that for item No. 2, EPD has two (2) civilian employees in Central Records who have access to ATS/ACS and

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

<sup>2</sup> Represented by Ted J. Del Guercio, III, Esq., of McManimon, Scotland & Baumann, LLC (Roseland, NJ).

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

<sup>4</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. Edison Police Department (Middlesex), 2020-55 – Findings and Recommendations of the Executive Director

provided their name and date of hire. Ms. Connell further stated that “[o]n information and belief, every [EPD officer] would also have access to ATS/ACS.”

#### Denial of Access Complaint:

On February 22, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to provide the “name, rank and date of hire” of each EPD employee who has access to eCDR and/or ATS/ACS as per N.J.S.A. 47:1A-10. The Complainant asserted that other police departments did not have issues providing the requested information. The Complainant requested that the Custodian be ordered to fulfill the OPRA request, and that counsel fees be awarded as a result of the non-compliance.

#### Statement of Information:

On March 19, 2020, the Custodian filed a Statement of Information (“SOF”). The Custodian certified that she received the Complainant’s OPRA request on January 31, 2020. The Custodian certified that her search included contacting EPD to obtain responsive records. The Custodian certified that on February 20, 2020, she responded to the Complainant in writing, providing the requested information.

The Custodian asserted that the matter could have been avoided had the Complainant requested clarification as to what was provided to him. The Custodian asserted that by the Complainant’s admission, the underlying basis of the subject OPRA request was to confirm whether police staff had access to eCDR and ATS/ACS was for a separate GRC complaint.<sup>5</sup> The Custodian asserted that the response provided: that all EPD personnel could access eCDR, was sufficient for the Complainant’s purposes. The Custodian argued that if the response provided was insufficient, the Complainant could have asked for only the information required to be provided under N.J.S.A. 47:1A-10. The Custodian also asserted that the Township identified the two (2) civilian employees having ATS/ACS access, which contradicts the Complainant’s assertion that the response was deficient in the first instance.

### Analysis

#### Sufficiency of Response

OPRA provides that a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g). Further, in Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the GRC held that “[t]he Custodian’s response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).” In Graumann v. Newfield Police Dep’t (Gloucester), GRC Complaint No. 2014-314 (May 2015), the subject OPRA request sought multiple items in a single paragraph, as opposed to an enumerated list. In her response, the custodian only addressed a portion of the OPRA request. The Council determined that the custodian’s response was

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<sup>5</sup> The matter in question was Owoh, Esq. (O.B.O. AADARI) v. Twp. of Edison (Middlesex), GRC Complaint No. 2018-64 (February 2020).

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. Edison Police Department (Middlesex), 2020-55 – Findings and Recommendations of the Executive Director



insufficient because it failed to address each request item individually. In reaching this conclusion, the Council reasoned that the custodian “completely failed to acknowledge or address the balance of the request.”

Here, the Complainant’s OPRA request item Nos. 1 & 2 sought the name, rank, and date of hire for all EPD employees having access to eCDR and/or ATS/ACS. In response, Ms. Connell stated that all EPD officers had access to eCDR, and all EPD officers had access to ATS/ACS in addition to the two (2) civilian employees mentioned. However, the response did not include the name, rank, and date of hire for the EPD officers with access to the databases. In the SOI, the Custodian asserted that the response was sufficient based upon the Complainant’s underlying basis for submitting the OPRA request. Thus, in accordance with Graumann, GRC 2014-314, the evidence of record demonstrates that the Custodian’s response was insufficient.

Therefore, the Custodian’s response was insufficient because she failed to respond in writing to each individual item contained in the Complainant’s January 31, 2020 OPRA request. N.J.S.A. 47:1A-5(g), Paff, GRC 2007-272, and Graumann, GRC 2014-314.

### **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.

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 (emphasis added). 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.

Here, the Complainant’s OPRA request item Nos. 1 & 2 sought the name, rank, and date of hire for all EPD employees having access to eCDR and/or ATS/ACS. In response, Ms. Connell stated that all EPD officers had access to eCDR, and all EPD officers had access to ATS/ACS in addition to the two (2) civilian employees mentioned. In the SOI, the Custodian certified that Ms. Connell’s responses were sufficient based upon the Complainant’s clarifications and underlying basis for the requests. Notwithstanding, the Custodian conceded that the requested name, rank, and date of hire information for both request items is disclosable under N.J.S.A. 47:1A-10.

Upon review, the GRC is satisfied that the Custodian unlawfully denied access to the Complainant’s OPRA requests. Ms. Connell’s response and the Custodian’s certification that all EPD officers had access to eCDR may have addressed the Complainant’s reasons for requesting

the records but does not sufficiently disclose the personnel information sought. N.J.S.A. 47:1A-10 and Kovalcik, 206 N.J. at 594. Additionally, although the Custodian provided the name and date of hire for two (2) civilian employees with access to ATS/ACS and Ms. Connell added that all EPD officers had access, the requested name, rank, and date of hire information should have been provided to fulfill the request.

Accordingly, the Custodian unlawfully denied access to the Complainant's January 30, 2020 OPRA request. N.J.S.A. 47:1A-6. Specifically, because the Custodian certified that all EPD officers had access to eCDR, and Ms. Connell stated that all EPD officers had access to ATS/ACS, their name, rank, and date of hire should have been provided in accordance with N.J.S.A. 47:1A-10 and Kovalcik, 206 N.J. at 594. Thus, the Custodian shall provide this information to the Complainant.

### **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 Custodian 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's response was insufficient because she failed to respond in writing to each individual item contained in the Complainant's January 31, 2020 OPRA request. N.J.S.A. 47:1A-5(g), Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), and Graumann v. Newfield Police Dep't (Gloucester), GRC Complaint No. 2014-314 (May 2015).
2. The Custodian unlawfully denied access to the Complainant's January 30, 2020 OPRA request. N.J.S.A. 47:1A-6. Specifically, because the Custodian certified that all Edison Police Department officers had access to eCDR, and Ms. Connell stated that all Edison Police Department officers had access to ATS/ACS, their name, rank, and date of hire should have been provided in accordance with N.J.S.A. 47:1A-10 and Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011). Thus, the Custodian shall provide this information to the Complainant.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

**redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>6</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>7</sup> to the Executive Director.<sup>8</sup>**

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 Custodian is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado  
Staff Attorney

April 20, 2021

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<sup>6</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>7</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>8</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. Edison Police Department (Middlesex), 2020-55 – Findings and Recommendations of the Executive Director