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TAHESHA L. WAY
Lieutenant Governor

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

November 7, 2024 Government Records Council Meeting

Rotimi Owoh, Esq. (o/b/o Delores Simmons,
Obafemi Simmons, and Grace Woko)
Complainant

Complaint No. 2021-142

v.
Park Ridge Police Department (Bergen)
Custodian of Record

At the November 7, 2024, public meeting, the Government Records Council (“Council”) considered the October 29, 2024, 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’s request for reconsideration was timely, as it was provided to the GRC and the Complainant on July 11, 2024, the ninth (9th) business day after receipt of the Council’s Order. N.J.A.C. 5:105-2.10.
2. The Custodian was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. See Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The Custodian has established that the complaint should be reconsidered based on a “mistake.” The Custodian has also shown that the Council acted arbitrarily, capriciously or unreasonably. See D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Specifically, the Council mistakenly held that the Custodian unlawfully denied access to the Complainant’s request when the prevailing case law supported his denial. Further, the Council mistakenly determined the Complainant was a prevailing party, as the record indicates that the Custodian’s post-complaint production of records was due to the Supreme Court’s ruling and not the complaint filing. Thus, the Council should grant the Custodian’s request for reconsideration based on a mistake. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
3. The Council should rescind its June 25, 2024 Final Decision conclusion No. 1 and find that while the Custodian’s May 28, 2021 response to the Complainant’s May 27, 2021 OPRA request is no longer a lawful denial pursuant to Simmons v. Mercado, 247 N.J.

24, 42 (2021); her response was nonetheless lawful at that time because it was consistent with the prevailing case law and Council decisions prior to the Court's ruling. N.J.S.A. 47:1A-6; Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020); Moore v. N.J. Dep't of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010). Thus, the Council declines to order disclosure here.

4. The Council should also rescind its June 25, 2024 Final Decision conclusion No. 2 and find that the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the evidence of record supports that the original Custodian's response was lawful at the time and the Custodian's subsequent actions were in response to Simmons, 247 N.J. 24 rather than the complaint. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76.

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 7th Day of November 2024

John A. Alexy, Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: November 12, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration

**Supplemental Findings and Recommendations of the Executive Director
November 7, 2024 Council Meeting**

**Rotimi Owoh, Esq. (on Behalf of Delores Simmons,
Obafemi Simmons, and Grace Woko)¹
Complainant**

GRC Complaint No. 2021-142

v.

**Park Ridge Police Department (Bergen)²
Custodial Agency**

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

1. Complaints and summonses prepared by your police department relating to individuals who were charged with drug possession and or drug paraphernalia by your police department from January 2021 to present.
2. Driving While Intoxicated/Driving under the Influence (“DWI/DUI”) complaints and summonses prepared and or issued by your police department from January 2021 to present.

Custodian of Record: Chief Joseph Madden

Request Received by Custodian: May 27, 2021

Response Made by Custodian: May 28, 2021

GRC Complaint Received: July 7, 2021

Background

June 25, 2024 Council Meeting:

At its June 25, 2024 public meeting, the Council considered the June 18, 2024 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 unlawfully denied access to the requested complaints and summonses responsive to the Complainant’s May 27, 2021 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve responsive records

¹ The Complainant represents Delores Simmons, Obafemi Simmons, and Grace Woko.

² Represented by John Previously represented by Bryan Eyerman, Esq., of Dario, Albert, Metz, Eyerman, Canda, Concannon, Ortiz and Krouse, P.C. (Fort Lee, NJ).

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

created by the Park Ridge Police Department. See Simmons v. Mercado, 247 N.J. 24, 42 (2021). However, the Council declines to order disclosure since the evidence of record demonstrates that the Custodian provided the Complainant with responsive records on March 21, 2021.

2. 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 did not provide the Complainant with the requested records until after the instant complaint was filed. 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(c).**

Procedural History:

On June 27, 2024, the Council distributed its Final Decision to all parties. On July 11, 2024, the Custodian filed a request for reconsideration of the Council’s June 25, 2024 Final Decision based on a mistake. Initially, the Custodian maintained that, due to the July 4 holiday, the request for reconsideration was timely under N.J.A.C. 5:105-2.10(b).

The Custodian asserted that at the time of the denial of access, Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020) was the authoritative case on the disclosure of complaints and summons from police departments. The Custodian asserted that under Simmons, police departments were not obligated to disclose CDR records because they were maintained by the Judiciary’s electronic database, rather than the agency. The Custodian asserted that Simmons was reversed by the Supreme Court on June 17, 2021, citing Simmons v. Mercado, 247 N.J. 24 (2021), rev’d 464 N.J. Super. 77 (App. Div. 2020).

The Custodian asserted that the GRC does not retroactively apply court decisions to complaints. See Moore v. N.J. Dep’t of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010). The Custodian asserted that the facts in Owoh, Esq. v. Borough of Roselle Park Police Dep’t, GRC Complaint No. 2021-141 (December 2022) are the same as the instant matter, where at the time of the custodian’s denial, Simmons, 464 N.J. Super. 77 was the prevailing case law. The Custodian noted that in Roselle, 2021-141, the GRC found the complainant was not a prevailing party, relying on Gibbons v. Gibbons, 86 N.J. 515 (1981), and Moore, GRC 2009-144. The Custodian further asserted that the Appellate Division upheld the GRC’s ruling rejecting the complainant’s prevailing party claim. See Owoh v. Borough of Roselle Park Police Dep’t, 2024

N.J. Super. Unpub. LEXIS 1479 (App. Div. July 2024). The Custodian thus argued that the GRC committed plain error in finding the Complainant a prevailing party.

The Custodian next asserted there was no causal nexus between the Complainant's filing and relief achieved in accordance with Mason v. City of Hoboken, 196 N.J. 51, 71 (2008). The Custodian asserted that in Roselle, slip op., the court agreed with the GRC's finding that the custodian's post-complaint production of records was the result of the Court's reversal of Simmons, and the complaint was not the catalyst invoking the change in the custodian's conduct.

The Custodian asserted that the facts in Roselle, slip op., match the instant matter where the Custodian denied the request on May 28, 2021 based on the Appellate Division's decision in Simmons. The Custodian asserted that the production of records on March 21, 2022 was due to the Court's reversal of Simmons. The Custodian therefore argued that there was no causal nexus between the complaint filing and the Custodian's release of records.

On July 11, 2024, the Complainant submitted objections to the request for reconsideration. The Complainant first argued that the request for reconsideration was untimely. The Complainant then argued that the GRC's decision was proper pursuant to the Court's decision in Simmons, 247 N.J. 24.

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the Custodian filed the request for reconsideration of the Council's Order dated June 25, 2024 on July 11, 2024, nine (9) business days after receipt of the Council's Order.

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, . . . 242 N.J. Super. at 401. “Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable

whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.” Ibid.

[In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).]

The GRC first addresses the Complainant’s contention that the Custodian’s request for reconsideration was untimely. Pursuant to N.J.A.C. 5:105-2.10, a party seeking reconsideration is afforded ten (10) business days from the date of receipt of the Council’s Order to file a request.

Here, the GRC delivered the Order to the parties on June 27, 2024. When accounting for the July 4 holiday, the tenth (10th) business day receipt is July 12, 2024. The Custodian submitted the request for reconsideration to the GRC and the Complainant via e-mail on July 11, 2024, the ninth (9th) business day after receipt.

Therefore, the Custodian’s request for reconsideration was timely, as it was provided to the GRC and the Complainant on July 11, 2024, the ninth (9th) business day after receipt of the Council’s Order. N.J.A.C. 5:105-2.10.

The GRC has reviewed the Custodian’s arguments and agrees that this complaint should be reconsidered based on “mistake,” as the facts and circumstances parallel those in Roselle, GRC 2021-141. Here the Custodian denied the Complainant’s request on May 28, 2021 in accordance with Simmons, 464 N.J. Super. 77. The Supreme Court then issued its opinion in Simmons, 247 N.J. 24 on June 17, 2021. Thereafter, the Complainant filed the instant complaint on July 7, 2021.

The timeline above demonstrates that, when assessing the applicable case law at the time of denial, the record demonstrates that Simmons, 464 N.J. Super. 77 was the prevailing case law. Thus, in accordance with Gibbons and Moore, the Custodian’s denial at the time was lawful and was under no obligation to provide the Complainant with responsive records.

The Complainant argued that the decision was proper pursuant to the Supreme Court’s reversal of Simmons. However, like Roselle, GRC 2021-141, although the Court’s reversal was the prevailing authority at the time of the complaint it was not the prevailing authority at the time of the Custodian’s response. Because the Custodian’s May 28, 2021 denial was lawful and proper at the time, the March 21, 2022 production of records can only be attributed to the Court’s reversal. Therefore, the complaint was not the causal nexus, and the Complainant should not have been deemed a prevailing party.

As the moving party, the Custodian was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. See Cummings, 295 N.J. Super. at 384. The Custodian has established that the complaint should be reconsidered based on a “mistake.” The Custodian has also shown that the Council acted arbitrarily, capriciously or unreasonably. See D’Atria, 242 N.J. Super. at 401. Specifically, the

Council mistakenly held that the Custodian unlawfully denied access to the Complainant's request when the prevailing case law supported his denial. Further, the Council mistakenly determined the Complainant was a prevailing party, as the record indicates that the Custodian's post-complaint production of records was due to the Supreme Court's ruling and not the complaint filing. Thus, the Council should grant the Custodian's request for reconsideration based on a "mistake." Cummings, 295 N.J. Super. at 384; D'Atria, 242 N.J. Super. at 401; Comcast, 2003 N.J. PUC at 5-6.

Based on the foregoing, the Council should rescind its June 25, 2024 Final Decision conclusion No. 1 and find that while the Custodian's May 28, 2021 response to the Complainant's May 27, 2021 OPRA request is no longer a lawful denial pursuant to Simmons, 247 N.J. at 42; his response was nonetheless lawful at that time because it was consistent with the prevailing case law and Council decisions prior to the Court's ruling. N.J.S.A. 47:1A-6; Simmons, 464 N.J. Super. 77; Moore, GRC 2009-144.

The Council should also rescind its June 25, 2024 Final Decision conclusion No. 2 and find that the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters, 387 N.J. Super. at 432. Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the evidence of record supports that the Custodian's response was lawful at the time and the Custodian's subsequent actions were in response to Simmons, 247 N.J. 24 rather than the complaint. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's request for reconsideration was timely, as it was provided to the GRC and the Complainant on July 11, 2024, the ninth (9th) business day after receipt of the Council's Order. N.J.A.C. 5:105-2.10.
2. The Custodian was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. See Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The Custodian has established that the complaint should be reconsidered based on a "mistake." The Custodian has also shown that the Council acted arbitrarily, capriciously or unreasonably. See D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Specifically, the Council mistakenly held that the Custodian unlawfully denied access to the Complainant's request when the prevailing case law supported his denial. Further, the Council mistakenly determined the Complainant was a prevailing party, as the record indicates that the Custodian's post-complaint production of records was due to the Supreme Court's ruling and not the complaint filing. Thus, the Council should grant the Custodian's request for reconsideration based on a mistake. Cummings

- v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).
3. The Council should rescind its June 25, 2024 Final Decision conclusion No. 1 and find that while the Custodian's May 28, 2021 response to the Complainant's May 27, 2021 OPRA request is no longer a lawful denial pursuant to Simmons v. Mercado, 247 N.J. 24, 42 (2021); her response was nonetheless lawful at that time because it was consistent with the prevailing case law and Council decisions prior to the Court's ruling. N.J.S.A. 47:1A-6; Simmons v. Mercado, 464 N.J. Super. 77 (App. Div. 2020); Moore v. N.J. Dep't of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010). Thus, the Council declines to order disclosure here.
 4. The Council should also rescind its June 25, 2024 Final Decision conclusion No. 2 and find that the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the evidence of record supports that the original Custodian's response was lawful at the time and the Custodian's subsequent actions were in response to Simmons, 247 N.J. 24 rather than the complaint. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76.

Prepared By: Samuel A. Rosado
Staff Attorney

October 29, 2024



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

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

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

June 25, 2024 Government Records Council Meeting

Rotimi Owoh, Esq. (o/b/o Delores Simmons,
Obafemi Simmons, and Grace Woko)
Complainant

Complaint No. 2021-142

v.
Park Ridge Police Department (Bergen)
Custodian of Record

At the June 25, 2024 public meeting, the Government Records Council (“Council”) considered the June 18, 2024 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 unlawfully denied access to the requested complaints and summonses responsive to the Complainant’s May 27, 2021 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve responsive records created by the Park Ridge Police Department. See Simmons v. Mercado, 247 N.J. 24, 42 (2021). However, the Council declines to order disclosure since the evidence of record demonstrates that the Custodian provided the Complainant with responsive records on March 21, 2021.
2. 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 did not provide the Complainant with the requested records until after the instant complaint was filed. 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(c).**

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 25th Day of June 2024

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 27, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 25, 2024 Council Meeting**

**Rotimi Owoh, Esq. (on Behalf of Delores Simmons,
Obafemi Simmons, and Grace Woko)¹
Complainant**

GRC Complaint No. 2021-142

v.

**Park Ridge Police Department (Bergen)²
Custodial Agency**

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

1. Complaints and summonses prepared by your police department relating to individuals who were charged with drug possession and or drug paraphernalia by your police department from January 2021 to present.
2. Driving While Intoxicated/Driving under the Influence (“DWI/DUI”) complaints and summonses prepared and or issued by your police department from January 2021 to present.

Custodian of Record: Chief Joseph Madden

Request Received by Custodian: May 27, 2021

Response Made by Custodian: May 28, 2021

GRC Complaint Received: July 7, 2021

Background⁴

Request and Response:

On May 27, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the original Custodian seeking the above-mentioned records. On May 28, 2021, the Custodian responded to the Complainant in writing, stating that requests for summonses and complaints would need to be made with the municipal court.

¹ The Complainant represents Delores Simmons, Obafemi Simmons, and Grace Woko.

² Previously represented by Bryan Eyerman, Esq., of Dario, Albert, Metz, Eyerman, Canda, Concannon, Ortiz and Krouse, P.C. (Fort Lee, NJ).

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

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

Rotimi Owoh, Esq. (on Behalf of Delores Simmons, Obafemi Simmons, and Grace Woko) v. Park Ridge Police Department (Bergen), 2021-142 – Findings and Recommendations of the Executive Director

Denial of Access Complaint:

On July 7, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian improperly denied access to the request items in the wake of the New Jersey Supreme Court’s decision in Simmons v. Mercado, 247 N.J. 24 (2021), rev’g 464 N.J. Super. 77 (App. Div. 2020). The Complainant requested the GRC compel the Park Ridge Police Department (“PRPD”) to fully comply with the OPRA request and to award counsel fees.

Supplemental Response:

On March 21, 2022, the Custodian forwarded an e-mail to the GRC containing the responsive summons and complaints. In the body of the e-mail, the Custodian acknowledged that he was incorrect in referring the Complainant to the municipal court in response to the OPRA request but noted that the Complainant stopped communicating with the Custodian prior to filing the instant complaint.

Statement of Information:⁵

On March 21, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on May 27, 2021. The Custodian certified that he responded in writing on May 28, 2021, stating that requests for complaints and summonses needed to be sought from the municipal court.

The Custodian asserted that when he initially received the OPRA request he believed that the court was responsible for providing the information and informed the Complainant accordingly. The Custodian then asserted that he was later told that PRPD was responsible for providing the records and did so accordingly, simultaneously with the SOI.

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).

⁵ On July 30, 2021, this complaint was referred to mediation. On January 28, 2022, this complaint was referred back to the GRC for adjudication.

Rotimi Owoh, Esq. (on Behalf of Delores Simmons, Obafemi Simmons, and Grace Woko) v. Park Ridge Police Department (Bergen), 2021-142 – Findings and Recommendations of the Executive Director

In Simmons, the Complainant requested the same or similar records as those at issue in the instant matter, with the custodian asserting that the records were not maintained by the Millville Police Department (“MPD”) once its officers created and submitted the records through eCDR. 247 N.J. at 32. The Court reversed the Appellate Division and found that the requested records were government records subject to disclosure under OPRA. Id. at 29. The Court found that notwithstanding which government branch created the CDR-1 and -2 forms, it is the information contained within those forms by MPD officers that is sought by AADARI. Id. at 40-41. Thus, the Court held that:

Because MPD officers create the completed CDR-1s by populating the forms with the information necessary to generate a summons and submit it to the court, there is no question that the CDR-1s are government records subject to disclosure pursuant to OPRA.

[Id.]

Additionally, the Court rejected MPD’s argument that they did not maintain the records, holding that OPRA’s definition of a government record is not restricted to records maintained by the agency, but rather includes records it creates, even if not maintained. Id. at 41. Thus, the Court found, “that the Judiciary might maintain on its servers the information that MPD made does not absolve MPD of its obligation to produce that information pursuant to a proper OPRA request made to MPD.” Id. at 42.

In the instant matter, the Custodian denied access to the Complainant’s OPRA request on May 28, 2021. The Complainant filed the instant matter on July 7, 2021, stating the Custodian’s non-disclosure was contrary to the Simmons decision. In the SOI, the Custodian asserted that subsequent to receiving the instant complaint, he was informed that PRPD was responsible for providing the requested summonses and complaints, and provided those records to the Complainant on March 21, 2022.

When considering the Court’s decision in Simmons, the Custodian maintained the obligation to provide the Complainant with responsive records created by PRPD. Notwithstanding whether the PRPD maintained physical copies of same, the Court held that since police departments created the CDR-1s and CDR-2s when inputting information, they were government records even if maintained by the Judiciary’s electronic databases. Simmons, 247 N.J. at 42.

Accordingly, the Custodian unlawfully denied access to the requested complaints and summonses responsive to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve responsive records created by PRPD. See Simmons, 247 N.J. at 42. However, the Council declines to order disclosure since the evidence of record demonstrates that the Custodian provided the Complainant with responsive records on March 21, 2021.

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 (7th ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties . . .” Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863. Further, the Supreme Court expressed concern that the catalyst theory would spawn extra litigation over attorney's fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

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

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

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6. Under the prior RTKL, “[a] plaintiff in whose favor such an order [requiring access to public records]

issues . . . may be awarded a reasonable attorney's fee not to exceed \$500.00.” N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

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

The Court in Mason, further held that:

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

[Id. at 76.]

In the instant matter, the Complainant sought complaints and summonses prepared by PRPD pertaining to drug possession, drug paraphernalia, and DUI/DWI offenses. The Custodian responded on May 28, 2021, asserting that the records were maintained by the municipal court. The Complainant then filed the instant complaint on July 7, 2021, asserting that the Custodian should have obtained the records in accordance with Court's ruling in Simmons. Thereafter, the Custodian provided the Complainant with the responsive records simultaneously with the SOI.

In determining whether the Complainant is a prevailing party entitled to attorney's fees, the GRC is satisfied that the evidence of record supports a conclusion in the affirmative. The Custodian initially denied access to the Complainant's request by directing him to the municipal court. It was only until after the complaint was filed that the Custodian reversed course and provided the Complainant with responsive records. Thus, a causal nexus exists between this complaint and the change in the Custodian's conduct. Mason 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney's fees.⁶

Therefore, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct.” Teeters, 387 N.J. Super. at 432. Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the Custodian did not provide the Complainant with the requested records until after the instant complaint was filed. 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

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

Rotimi Owoh, Esq. (on Behalf of Delores Simmons, Obafemi Simmons, and Grace Woko) v. Park Ridge Police Department (Bergen), 2021-142 – Findings and Recommendations of the Executive Director

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(c).**

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian unlawfully denied access to the requested complaints and summonses responsive to the Complainant's May 27, 2021 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve responsive records created by the Park Ridge Police Department. See Simmons v. Mercado, 247 N.J. 24, 42 (2021). However, the Council declines to order disclosure since the evidence of record demonstrates that the Custodian provided the Complainant with responsive records on March 21, 2021.
2. 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 did not provide the Complainant with the requested records until after the instant complaint was filed. 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(c).**

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June 18, 2024