



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 13, 2022 Government Records Council Meeting

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

Complaint No. 2021-144

v.

Borough of Roselle Police Department (Union)
Custodian of Record

At the December 13, 2022 public meeting, the Government Records Council (“Council”) considered the December 6, 2022 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. Recognizing that the Custodian’s June 4, 2021 response to the Complainant’s April 28, 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); Owoh, Esq. (O.B.O. AADARI) v. Borough of East Newark (Hudson), GRC Complaint No. 2019-256 (April 27, 2021); 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.
2. 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 Custodian’s response was lawful at the time and her 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 13th Day of December 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: December 15, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
December 13, 2022 Council Meeting**

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

GRC Complaint No. 2021-144

v.

**Bridgeton Police Department (Cumberland)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of “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 2020 to present.”³

Custodian of Record: Nicole Almanza

Request Received by Custodian: April 13, 2021

Response Made by Custodian: April 16, 2021; May 21, 2021, June 4, 2021; June 21, 2021

GRC Complaint Received: July 7, 2021

Background⁴

Request and Response:

On April 13, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 16, 2021 and May 21, 2021, the Custodian extended the time to respond to the Complainant’s OPRA request. On June 4, 2021, the Custodian responded to the Complainant in writing, stating there were no responsive records.

On June 21, 2021, the Complainant e-mailed the Custodian requesting clarification. Therein, the Complainant inquired whether anyone was charged with drug related or DWI/DUI offenses from January 2020 to the present. That same day, the Custodian responded to the Complainant stating that the complaints pertaining to drug possession and/or drug paraphernalia were maintained and held with the Municipal Court, and therefore the Bridgeton Police Department (“BPD”) had no responsive records.

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

² Represented by Michele Gibson, Esq., City Solicitor (Bridgeton, 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, Baafi Simmons, and Grace Woko) v. Bridgeton Police Department (Cumberland), 2021-144 – 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 denied access to his request on June 21, 2021. The Custodian asserted that the response was improper in the wake of the New Jersey Supreme Court’s June 17, 2021 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 BPD to fully comply with the OPRA request and to award counsel fees.

Supplemental Response:

On July 28, 2021, the Custodian e-mailed the Complainant stating that responsive records were attached with redactions made to personally identifying information.

Statement of Information:⁵

On September 1, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on April 13, 2021. The Custodian certified that her search included forwarding the request to the City of Bridgeton (“City”)’s Administration, Law, and Police Departments to locate records. The Custodian certified that extensions were requested on April 16, 2021 and May 21, 2021. The Custodian certified that she responded in writing on June 4, 2021, stating that there were no responsive records.

The Custodian certified that at the time of her initial response, she relied on Simmons, 464 N.J. Super. 44, which had not been overruled by the Court. The Custodian asserted that her June 21, 2021 e-mail was an explanation of her June 4, 2021 response and was sent only in response to the Complainant’s follow-up e-mail. The Custodian certified that the Complainant failed to inform her that the Court overturned the Appellate Division on June 17, 2021 until he filed the instant complaint. The Custodian also certified that the requested records were provided to the Complainant on July 28, 2021 in light of the Court’s ruling. The Custodian also included a certification from Chief Michael A. Giamari, Sr., who certified that at the time of the June 4, 2021 response, BPD did not maintain physical copies of the requested records, but had access to same via eCDR and ATS/ACS.

Through Counsel, the Custodian argued that the Complainant was not a prevailing party in this matter. The Custodian first asserted that a requestor does not become a prevailing party solely because the defendant produced the records after the complaint was filed, citing in part Spectraserv, Inc. v. Middlesex Cnty. Util. Auth., 416 N.J. Super. 565, 583 (App. Div. 2010). The Custodian noted that in Grieco v. Borough of Haddon Heights, 449 N.J. Super. 513 (Law Div. 2015), the court declined to award the plaintiff attorney’s fees when the records were not provided due to human error and the plaintiff refused to cooperate with the custodian.

The Custodian argued in the instant matter, the requested records were lawfully denied on June 4, 2021 pursuant to the prevailing caselaw under Simmons, 464 N.J. Super. 77. The Custodian

⁵ On July 30, 2021, the matter was referred to mediation. On August 20, 2021, the matter was referred back to the GRC for adjudication.

Rotimi Owoh, Esq. (on Behalf of Delores Simmons, Baafi Simmons, and Grace Woko) v. Bridgeton Police Department (Cumberland), 2021-144 – Findings and Recommendations of the Executive Director

contended that the Complainant's June 21, 2021 e-mail was an attempt to re-open a closed request with the goal of obtaining attorney's fees. The Custodian also argued that as the attorney for the Simmons plaintiffs, withholding knowledge of the Supreme Court's reversal made his actions more "egregious" and contravenes the cooperative balance of OPRA.

The Custodian next contended that the production of records in this matter was due to the Supreme Court's decision in Simmons, 247 N.J. 24. The Custodian argued that had the decision not occurred or if the Court affirmed the Appellate Division, the Complainant would not have a legal basis to file the instant complaint. The Custodian also noted that the Council previously relied on the Appellate Division in similar matters involved the Complainant prior to the Court's reversal, citing Owoh, Esq. (O.B.O. AADARI) v. Borough of Norwood (Bergen), GRC Complaint No. 2020-83 (May 2021).

The Custodian next asserted that a *pro se* party is not entitled to attorney's fees, citing Feld v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 903 (April 18, 2019), and Segal v. Lynch, 211 N.J. 230 (2012). The Custodian argued that while the caption of the instant matter is filed "on behalf of", the actual Complainant is Mr. Owoh. The Custodian asserted that in Section 1 of the complaint, the "Law Office of Rotimi Owoh" was identified as the requestor of records, and the complaint was signed by Mr. Owoh, which attests that he was the person who submitted the OPRA request.

Additional Submissions:

On October 9, 2021, the Complainant submitted a brief in response to the Custodian's SOI. Therein, the Complainant argued that the complaint was the catalyst which prompted the City to provide the records. The Complainant noted that the Custodian's June 4, 2021 response was "no records responsive" and argued that the Custodian subsequently raised a separate reason for denial. The Complainant asserted that the basis for denial was determined at the time of denial and not after a complaint is filed, citing Schwartz v. N.J. Dep't of Human Servs. GRC Complaint No. 2004-60 (February 2005).

On October 20, 2021, the Custodian submitted a reply to the Complainant's response. The Custodian asserted that the Complainant's Denial of Access Complaint focuses on the June 21, 2021 response, rather than the June 4, 2021 response. The Custodian noted that given the Complainant's involvement in Simmons and separate litigation with the City, he understood the basis for the Custodian's June 4, 2021 response. The Custodian argued that the Complainant waited to seek clarification until June 21, 2021 so he could use the Court's decision to his advantage.

The Custodian contended that the Complainant was now challenging the June 4, 2021 response instead of the June 21, 2021 response. The Custodian argued that at the time of the June 4, 2021 response, BPD did not maintain physical copies of the requested records and could only access same through eCDR. The Custodian thus contended that the response that "no records responsive" was valid.

On April 13, 2021, the Complainant e-mailed the parties, attaching a copy of African Am. Data & Research Inst. "AADARI" v. Plaza, 2022 N.J. Super. Unpub. LEXIS 600 (App. Div. 2022) (hereinafter "Plaza"), which pertained to the disclosure of CDR-1 records. The Complainant stated that the case was relevant to pending cases before the GRC. On April 14, 2021, the Complainant e-mailed the parties a copy of another decision, African Am. Data & Research Inst. "AADARI" v. Medina, 2022 N.J. Super. Unpub. LEXIS 73 (App. Div.) (hereinafter "Medina"), a consolidated case which also pertained to access to CDR-1 records.

On May 9, 2021, the Custodian submitted a response to the Complainant's April 13, 2021 and April 14, 2021 e-mails. The Custodian contended that the facts in the current matter can be distinguished from those in Plaza. The Custodian argued that the police department in Plaza denied access to the OPRA request prior to the Appellate Division's Simmons decision and therefore could not rely on same to deny access. The Custodian argued that the circumstances are the same in Medina, where the agencies denied access to the Complainant's request prior to the Simmons decision. The Custodian contended that in the instant matter, the denial was made after the Appellate Division issued its decision and was therefore relied upon. The Custodian maintained that the Complainant was not a prevailing party.

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.

Generally, the GRC does not retroactively apply court decisions to complaints pursuant to Gibbons v. Gibbons, 86 N.J. 515 (1981). There the Court held that "it is a fundamental principle of jurisprudence that retroactive application of new laws involves a high risk of being unfair." Id. at 522. In Moore v. N.J. Dep't of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010), the custodian denied access to responsive records in 2009 based upon a then existing Executive Order, the custodial agency's proposed regulations, and prior Council decisions relying on same. During the pendency of the complaint, the Appellate Division in 2010 reversed a separate Council decision relying on the Executive Order and proposed regulations. The Council held that while the custodian's basis for denial was no longer valid, the denial was not unlawful since at the time the request was consistent with prior GRC case law. See also Biss v. Borough of New Providence Police Dep't (Union), GRC Complaint No. 2009-21 (February 2010); Sallie v. N.J. Dep't of Law & Pub. Safety, Div. of Criminal Justice, GRC Complaint No. 2008-21 (Interim Order dated June 23, 2009).

In the instant matter, the Complainant submitted his OPRA request on April 13, 2021. After requesting several extensions, the Custodian responded to the Complainant on June 4, 2021, that there were "no records responsive." On June 21, 2021, the Complainant e-mailed the Custodian, seeking clarification that BPD did not charge anyone with drug related offenses. The Custodian

responded that same day stating that the complaints for those offenses were held with the Municipal Court and BPD had no responses records. The Complainant thereafter filed the instant matter on July 7, 2021, stating that the Custodian's June 21, 2021 response was contrary to Simmons, 247 N.J. 24. In the SOI, the Custodian argued that the June 4, 2021 response relied on the Appellate Division in Simmons, 464 N.J. Super. 77 and no unlawful denial of access occurred.

At the time of the Complainant's OPRA request and BPD's June 4, 2021 response, Simmons, 464 N.J. Super. 77 was the precedential decision on an agency's obligation to disclose eCDR records. There, the Complainant requested the same category of 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 same through eCDR. 464 N.J. Super. at 80. The court found that notwithstanding MPD's access to eCDR, "it does not alter the fact that the [requested complaints and summonses are] maintained by the judiciary." Id. at 86. The Council would thereafter rely on Simmons in subsequent decisions. See e.g., Owoh, GRC 2020-83; Owoh, Esq. (O.B.O. AADARI) v. Borough of East Newark (Hudson), GRC Complaint No. 2019-256 (April 27, 2021).

However, the Court reversed the Appellate Division on June 17, 2021. Simmons, 247 N.J. 24. The Court held that notwithstanding which government branch created the CDR-1 and -2 forms, it is the information contained within those forms that is sought by the Complainant. Id. at 40-41. Thus, the Court found 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. Therefore, 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.

Since this Denial of Access Complaint was filed after the Simmons decision, the GRC must determine the applicable law at the time of the response. See Moore, GRC 2009-144. Here, the parties dispute when the Custodian responded to the OPRA request, with the Complainant arguing that the Custodian responded on June 21, 2021, after the Simmons decision. The Complainant further argued that the June 4, 2021 response failed to mention the Appellate Division, and therefore could not be used as the basis for denial at that time. However, in the SOI Chief Giamari certified that BPD did not maintain physical copies of the requested records and only had access via eCDR. Thus, the Custodian's June 4, 2021 response was in accordance with the Appellate Division and prior GRC case law at the time, as the BPD's access to eCDR did not equate to possession of the requested records. See Owoh, GRC 2019-256.

Accordingly, recognizing that the Custodian's June 4, 2021 response to the Complainant's April 28, 2021 OPRA request is no longer a lawful denial pursuant to Simmons, 247 N.J. at 42; 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, 464 N.J. Super. 77; Owoh, GRC 2019-256; Moore, GRC 2009-144. Thus, the Council declines to order disclosure here.

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 BPD pertaining to drug possession and drug paraphernalia offenses. The Custodian responded on June 4, 2021, stating there were no responsive records. On June 17, 2021, the Court overturned the Appellate Division in Simmons, 247 N.J. 24. On June 21, 2021, the Complainant requested clarification from the Custodian on whether BPD charged anyone with drug-related offenses during the requested period. The Custodian responded that same day, stating that the complaints were held with the Municipal Court. The Complainant then filed the instant complaint on July 7, 2021, asserting that the Custodian should have obtained the records via BPD in accordance with the Court’s ruling. While the matter remained pending, the Custodian provided the Complainant with the requested records on July 28, 2021.

Initially, the GRC addresses the Custodian’s contention that the Complainant could not be a prevailing party because the Complainant, an attorney, is a *pro se* requestor. Here, the Complainant asserted that he represented Delores Simmons, Baafi Simmons, and Grace Woko in in the Denial of Access Complaint. Additionally, the OPRA request itself states it is from Delores Simmons, Obafemi Simmons, and Grace Woko. Further, the request sought a response via an e-mail address separate from the Complainant’s. Therefore, there is sufficient evidence

demonstrating that the Complainant submitted the OPRA request on the other parties' behalf at the time of the complaint and was not the requestor.

Next, in determining whether the Complainant is a prevailing party entitled to attorney's fees through causal nexus, the Complainant argued that the Custodian provided responsive records after the complaint was filed, which therefore demonstrated the casual nexus required under Mason, 196 N.J. at 76. Further, the Complainant referred to the Plaza and Medina decisions to demonstrate the Appellate Division awarding prevailing party fees due to the Court's Simmons decision.

However, the Council finds the facts in the current matter distinguishable from those in Plaza and Medina. As noted by the Custodian, the responses provided by the various agencies were made prior to the Appellate Division's Simmons decision, and therefore had no precedential backing or established law to rely upon. Moreover, in each of those cases the trial courts ordered disclosure and declared the Complainant a prevailing party prior to the Appellate Division's decision. Thus, the record demonstrated that those complaints were the factual causal nexus there.

In the instant matter, the Complainant relied on the Court's reversal as a basis for the unlawful denial in his complaint, which he argued created the causal nexus with the Custodian's realization that the previously relied upon authority had been overturned. However, while Simmons, 247 N.J. 24 was the prevailing authority at the time of the complaint filing, it was not the prevailing authority at the time of the response. The Custodian's June 4, 2021 response was made after the Appellate Division's published ruling in Simmons, 464 N.J. Super. 77, but before the Court's June 17, 2021 reversal. The Custodian's production of records after the complaint filing can therefore only be attributed to the Court's Simmons reversal, as the Custodian's response denying access was pursuant to proper legal foundation. Accordingly, the complaint was not the causal nexus exists, and the Complainant is not a prevailing party.

Therefore, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters, 387 N.J. Super. 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 her 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. Recognizing that the Custodian's June 4, 2021 response to the Complainant's April 28, 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);

Owoh, Esq. (O.B.O. AADARI) v. Borough of East Newark (Hudson), GRC Complaint No. 2019-256 (April 27, 2021); 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.

2. 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 Custodian's response was lawful at the time and her 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

December 6, 2022