



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

April 25, 2023 Government Records Council Meeting

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

Complaint No. 2021-240

v.  
Borough of Lodi (Bergen)  
Custodian of Record

At the April 25, 2023 public meeting, the Government Records Council (“Council”) considered the April 18, 2023 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 Complainant’s OPRA request item Nos. 7 and 8 seeking complaints and summonses were not overly broad. Rather, the request items sought specifically identifiable records and would not cause the Custodian to conduct research to process. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). Thus, the Custodian unlawfully denied access to this portion of the Complainant’s OPRA request. N.J.S.A. 47:1A-6. The Custodian shall therefore conduct a search for responsive records and provide same to the Complainant or notify same that no responsive records could be located.
2. **The Custodian shall comply with conclusion No. 1 above within ten (10) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**
3. The Custodian lawfully denied access to the Complainant’s OPRA request item Nos. 1-6. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that Lodi Police Department does not possess or maintain the requested records. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
4. 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, 77 (2008). Specifically, the Custodian has been ordered to conduct a search and provide responsive records to a portion of the Complainant's request pursuant to this complaint. 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. 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.**

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 April 2023

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: May 1, 2023**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 25, 2023 Council Meeting**

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

**GRC Complaint No. 2021-240**

**v.**

**Borough of Lodi (Bergen)<sup>2</sup>  
Custodial Agency**

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

1. Record showing the name, race, salary (or contractor amount) per year of each one of the solicitors your municipality hired in the last twenty (20) years.
2. Record showing the racial composition of your police force (police department) for each one of the past 10 years.
  - a. Record showing how many Black Police Officers your department has hired in the last 20 years. Please include the date of hire, date of separation, salary, name, race, and sex of each of the Black officers.
3. Record showing the names, race and sex of individuals (offenders) who were detained by your police department for failure to pay bail in the last 5 years.
4. Record showing the names, race and sex of individuals (offenders) who were detained by your police department in the last 5 years for failure to pay court fines.
5. Warrants that were executed by your police department for failure to pay court fines.
6. Names, date of hire, date of separation and reason for separation, salary at the time of separation who either resigned or retired or terminated or otherwise separated from 2008 to the present. N.J.S.A. 47:1A-10. This request includes any agreement entered with each one of the separated police officer(s).
  - a. When stating the reason for separation, please note that some police officers separate due to plea deal, criminal convictions, criminal charges, sentences, and or other court agreement or court proceedings that require officers to be separated from your police department and or law enforcement jobs.
  - b. Some police officers separate due to internal affairs investigations within the police departments.
7. Complaint (CDR-1s) 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.

---

<sup>1</sup> The Complainant represents the African American Data & Research Institute, Baffi Simmons, and Delores Simmons.

<sup>2</sup> Represented by Alan Spiniello, Esq., of Alan Spiniello Law Offices (Hackensack, NJ).

Rotimi Owoh, Esq. (on behalf of African American Data & Research Institute, Baffi Simmons & Delores Simmons) v. Borough of Lodi (Bergen), 2021-240 – Findings and Recommendations of the Executive Director

8. DWI/DUI summonses and complaints prepared and or issued by your police department from January 2020 to present.<sup>3</sup>

**Custodian of Record:** Captain Robert Salerno

**Request Received by Custodian:** August 27, 2021

**Response Made by Custodian:** September 21, 2021

**GRC Complaint Received:** October 12, 2021

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

#### **Request and Response:**

On or before August 26, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian for the Borough of Lodi (“Borough Custodian”) seeking the above-mentioned records. On August 26, 2021, the Borough Custodian responded to the Complainant in writing stating that the Borough of Lodi Police Department (“LPD”) had its own Records Custodian, and the request should be submitted directly to their attention. On September 21, 2021, the Custodian responded in writing stating that LPD did not possess or maintain responsive records for each of the request items.

#### **Denial of Access Complaint:**

On October 12, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian denied all his request items, and the time for compliance had since expired. The Complainant requested the GRC compel the Custodian to fully comply with the OPRA request and to award counsel fees.

The Complainant included an excerpt of a retention schedule for police departments as well as a copy of the New Jersey Supreme Court’s decision in Simmons v. Mercado, 247 N.J. 24 (2021).

#### **Statement of Information:**

On November 15, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on August 27, 2021. The Custodian certified that he responded in writing on September 21, 2021.

The Custodian maintained that for item Nos. 1-6, LPD did not keep records containing the information requested, and he was not obligated to create records. Librizzi v. Twp. of Verona Police Dep’t (Essex), GRC Complaint No. 2009-213 (August 2010). The Custodian also argued that for item Nos. 7 and 8, the records required the LPD to conduct research, and he was not obligated to conduct research to fulfill an OPRA request. Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007).

---

<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, Baffi Simmons & Delores Simmons) v. Borough of Lodi (Bergen), 2021-240 – Findings and Recommendations of the Executive Director

## Analysis

### Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.”* N.J.S.A. 47:1A-1.

[MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).]

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>5</sup> N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. at 534; Donato, GRC 2005-182. The second is those requests seeking information or asking questions. *See e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. *See e.g.* Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

---

<sup>5</sup> Affirmed on appeal from Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004). Rotimi Owoh, Esq. (on behalf of African American Data & Research Institute, Baffi Simmons & Delores Simmons) v. Borough of Lodi (Bergen), 2021-240 – Findings and Recommendations of the Executive Director

The Council addressed the search/research question in Donato, GRC 2005-182. There, the Council held that pursuant to MAG, a custodian is obligated to search his or her files to find identifiable government records listed in a requestor's OPRA request. The complainant in Donato requested all motor vehicle accident reports from September 5, 2005 to September 15, 2005. The custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

Pursuant to [MAG], the Custodian is obligated to search her files to find the identifiable government records listed in the Complainant's OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to research her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word search is defined as "to go or look through carefully in order to find something missing or lost." The word research, on the other hand, means "a close and careful study to find new facts or information." (Footnotes omitted.)

[Id.]

Additionally, in Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010), the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of "[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present." The Appellate Division determined that the request sought a *specific type of document, although it did not specify a particular case to which such document pertained* and was therefore not overly broad. Id. at 515-16 (emphasis added). Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012), found a request for the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information.

#### Request Item Nos. 7 and 8

Here, the Complainant's OPRA request item Nos. 7 and 8 sought DWI/DUI, drug possession, and drug paraphernalia complaints and summonses from 2020 to present. The Custodian asserted that the request items required him to conduct research.

Upon review, the GRC is satisfied that these request items are valid. Like the request in Burnett, the request items specifically identified government records spanning a definitive period: complaints and summonses. Moreover, the Complainant specifically identified the type of form used (CDR-1) to generate the requested complaints. Thus, the Complainant provided specifically identifiable information for the Custodian to conduct a search, rather than research.

Accordingly, the Complainant's OPRA request item Nos. 7 and 8 seeking complaints and summonses were not overly broad. Rather, the request items sought specifically identifiable records and would not cause the Custodian to conduct research to process. MAG, 375 N.J. Super. at 549; Burnett, 415 N.J. Super. at 515-16; Donato, GRC 2005-182. Thus, the Custodian unlawfully denied access to this portion of the Complainant's OPRA request. N.J.S.A. 47:1A-6.

The Custodian shall therefore conduct a search for responsive records and provide same to the Complainant or notify same that no responsive records could be located.

### **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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). In Merino v. Borough of Ho-Ho-Kus, GRC 2003-110 (July 2004), the custodian argued that the requested complaints and summonses were not subject to access since they were dated beyond the required retention period via the State’s retention schedule. The Council held that if the agency in fact possessed the responsive records, they were subject to access under OPRA even if they were supposed to have been destroyed in accordance with the retention schedule.

Additionally, the New Jersey Supreme Court has held that retention schedules created in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 to -32, did not satisfy the “required by law” standard under OPRA. See N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 568 (2017), aff’g in relevant part and rev’g in part, 441 N.J. Super. 70, 106-07 (App. Div. 2015). The Court found that if the retention schedules carried the force of law, parts of OPRA would be rendered meaningless due to the retention schedules’ comprehensive list of records. Id. The Court therefore held that “the retention schedules adopted by the State Records Committee [do not] meet the ‘required by law’ standard for purposes of OPRA.” Id.

In the current matter, the Complainant asserted that the Custodian denied access to his OPRA request. In the SOI, the Custodian maintained that LPD did not possess any records responsive to request item Nos. 1-6.

Although not elaborated further beyond attaching an excerpt to his complaint, to the extent the Complainant is relying on the retention schedules to demonstrate that LPD was required by law to keep and maintain the requested records such reliance is misplaced. Instead, the retention schedules determine how records that may be in the agency’s possession are to be maintained, and are not a legal requirement to make, maintain, or keep on file every identified record. See N. Jersey Media Grp. Inc., 229 N.J. at 568. Therefore, the retention schedules do not counter the Custodian’s certification that LPD does not possess or maintain the requested records.

Accordingly, the Custodian lawfully denied access to the Complainant’s OPRA request item Nos. 1-6. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that LPD does not possess or maintain the requested records. See Pusterhofer, GRC 2005-49.

## Prevailing Party Attorney's Fees

OPRA provides that:

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

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

In Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006), the Appellate Division held that a complainant is a “prevailing party” if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct. Id. at 432. Additionally, the court held that attorney’s fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct” (quoting Buckhannon Bd. & Care Home v. West Virginia Dep’t of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court held that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” Id. at 603 (quoting Black’s Law Dictionary 1145 (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 sought in part complaints and summonses prepared by LPD pertaining to drug paraphernalia, drug possession, and DUI/DWI offenses. In the SOI, the Custodian asserted that the request items required him to conduct research and was therefore not obligated to fulfill the request. The Complainant filed the instant complaint on October 12, 2021, asserting that the Custodian failed to provide the responsive records.

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 denied access to the Complainant's request on September 21, 2021, and maintained that the request items were invalid. However, in accordance with the conclusions above, the Custodian is now required to conduct a search for responsive records as the request items are in fact valid under OPRA. 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>6</sup>

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

---

<sup>6</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).

Rotimi Owoh, Esq. (on behalf of African American Data & Research Institute, Baffi Simmons & Delores Simmons) v. Borough of Lodi (Bergen), 2021-240 – Findings and Recommendations of the Executive Director

Custodian has been ordered to conduct a search and provide responsive records to a portion of the Complainant's request pursuant to this complaint. 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. 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 Complainant's OPRA request item Nos. 7 and 8 seeking complaints and summonses were not overly broad. Rather, the request items sought specifically identifiable records and would not cause the Custodian to conduct research to process. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). Thus, the Custodian unlawfully denied access to this portion of the Complainant's OPRA request. N.J.S.A. 47:1A-6. The Custodian shall therefore conduct a search for responsive records and provide same to the Complainant or notify same that no responsive records could be located.
2. **The Custodian shall comply with conclusion No. 1 above within ten (10) business days from receipt of the Council's Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**
3. The Custodian lawfully denied access to the Complainant's OPRA request item Nos. 1-6. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that Lodi Police Department does not possess or maintain the requested records. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
4. 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, 77 (2008). Specifically, the Custodian has been ordered to conduct a search and provide responsive records to a portion of the Complainant's request pursuant to this complaint. 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. 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

April 18, 2023