



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

November 7, 2024 Government Records Council Meeting

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

Complaint No. 2021-242

v.

Borough of Leonia (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 current Custodian complied with the Council’s June 25, 2024 Interim Order because he responded in the extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Pursuant to the Council’s June 25, 2024 Interim Order, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the current Custodian located and provided responsive records in compliance with the Council’s Interim Order. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney’s fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

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**

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

**Rotimi Owoh, Esq. (on behalf of African American
Data & Research Institute, Baffi Simmons & Delores
Simmons)¹
Complainant**

GRC Complaint No. 2021-242

v.

**Borough of Leonia (Bergen)²
Custodial Agency**

Records Relevant to Complaint:³ Electronic copies via e-mail of: Names, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension of individuals who either resigned or retired or terminated or otherwise separated from 2002 to 2017. 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.

Custodian of Record: Anne Dodd⁴
Request Received by Custodian: May 6, 2021
Response Made by Custodian: August 30, 2021
GRC Complaint Received: October 12, 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 Complainant represents the African American Data & Research Institute, Baffi Simmons, and Delores Simmons.

² Represented by Bradley D. Tishman, Esq., of Cleary, Jacobbe, Alfieri, & Jacobs, LLC (Oakland, NJ).

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

⁴ The current Custodian of Record is Jonathan Mandel.

1. The Custodian's August 31, 2021 response was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Specifically, the Custodian failed to indicate whether responsive settlements existed between the Borough of Leonia and any separated police officer.
2. The Custodian has not borne her burden of proving she lawfully denied access to the Complainant's OPRA request for the "Names, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension" of police officers who separated from the Borough of Leonia between 2002 and 2017. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). The current Custodian shall identify, locate, and produce the requested personnel information, either via an electronic database or via the most comprehensive records containing same. N.J.S.A. 47:1A-10. If no responsive information can be located, the current Custodian shall certify to same.
3. **The Custodian shall comply with conclusion No. 2 above within ten (10) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁵ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director.⁷**
4. Notwithstanding the Custodian's insufficient response, she has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking any "agreement" between the Borough of Leonia and separated officers. Specifically, the current Custodian certified, and the record reflects, that no such records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

⁵ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁶ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁷ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Procedural History:

On June 27, 2024, the Council distributed its Interim Order to all parties. On July 8, 2024, the current Custodian requested an extension of time until September 6, 2024. On July 11, 2024, the GRC granted the extension.

On September 5, 2024, the current Custodian responded to the Council's Interim Order, providing a table containing the requested personnel information of police officers separated from the Borough. The current Custodian also provided certified confirmation of compliance to the Executive Director. The current Custodian certified that with one exception each officer separated due to retirement. The current Custodian certified that to his knowledge the one officer did not complete his probationary period prior to termination. The current Custodian also certified that one of the retired officers in fact left due to obtaining employment with the Passaic County Prosecutor's Office. The current Custodian certified that all the remaining officers retired based upon their years of service.

Analysis

Compliance

At its June 25, 2024 meeting, the Council ordered the Custodian to identify, locate, and produce the requested personnel information and to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On June 27, 2024, the Council distributed its Interim Order to all parties, providing the Custodian ten (10) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on July 12, 2024.

On July 8, 2024, the sixth (6th) business day after receipt of the Council's Order, the current Custodian requested an extension of time until September 6, 2024 to respond to the Council's Order. On July 11, 2024, the GRC granted the extension.

On September 5, 2024, the current Custodian responded to the Council's Order, providing a table containing the requested personnel information, along with a certification detailing the reasons for separation for the officers. The current Custodian also provided certified confirmation of compliance to the Executive Director.

Therefore, the current Custodian complied with the Council's June 25, 2024 Interim Order because he responded in the extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

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 stated that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” (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.

[Mason 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 the “[n]ames, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension of individuals who either resigned or retired or terminated or otherwise separated from 2002 to 2017.” In response, the Custodian stated that the Borough did not possess a record containing all the requested personnel information and was not required to create a record comprising all the information. The Complainant then filed the instant complaint on October 12, 2021, asserting the Custodian failed to provide the responsive information, including the “real reason” for the officers’ separations.

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 the Complainant’s request, stating that no responsive records exist regarding the request for personnel information, and thereafter asserting that the request was invalid. However, the Council held that the request was valid, and the Custodian located and provided responsive records in response to the Council’s Interim Order. 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.⁸

Therefore, pursuant to the Council’s June 25, 2024 Interim Order, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters, 387 N.J. Super. at 432. Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the current Custodian located and provided responsive records in compliance with the Council’s Interim Order. 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**

⁸ 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).

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 current Custodian complied with the Council's June 25, 2024 Interim Order because he responded in the extended time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Pursuant to the Council's June 25, 2024 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the current Custodian located and provided responsive records in compliance with the Council's Interim Order. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Prepared By: Samuel A. Rosado, Esq.
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

INTERIM ORDER

June 25, 2024 Government Records Council Meeting

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

v.

Borough of Leonia (Bergen)
Custodian of Record

Complaint No. 2021-242

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’s August 31, 2021 response was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Specifically, the Custodian failed to indicate whether responsive settlements existed between the Borough of Leonia and any separated police officer.
2. The Custodian has not borne her burden of proving she lawfully denied access to the Complainant’s OPRA request for the “Names, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension” of police officers who separated from the Borough of Leonia between 2002 and 2017. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). The current Custodian shall identify, locate, and produce the requested personnel information, either via an electronic database or via the most comprehensive records containing same. N.J.S.A. 47:1A-10. If no responsive information can be located, the current Custodian shall certify to same.
3. **The Custodian shall comply with conclusion No. 2 above within ten (10) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each**

redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³

4. Notwithstanding the Custodian's insufficient response, she has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking any "agreement" between the Borough of Leonia and separated officers. Specifically, the current Custodian certified, and the record reflects, that no such records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 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

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

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

³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**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 African American
Data & Research Institute, Baffi Simmons & Delores
Simmons)¹
Complainant**

GRC Complaint No. 2021-242

v.

**Borough of Leonia (Bergen)²
Custodial Agency**

Records Relevant to Complaint:³ Electronic copies via e-mail of: Names, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension of individuals who either resigned or retired or terminated or otherwise separated from 2002 to 2017. 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.

Custodian of Record: Anne Dodd⁴
Request Received by Custodian: May 6, 2021
Response Made by Custodian: August 30, 2021
GRC Complaint Received: October 12, 2021

Background⁵

Request and Response:

On May 6, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 17, 2021, June 23, 2021,

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

² Represented by Bradley D. Tishman, Esq., of Cleary, Giacobbe, Alfieri, & Jacobs, LLC (Oakland, NJ).

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

⁴ The current Custodian of Record is Jonathan Mandel.

⁵ 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 Leonia (Bergen), 2021-242 – Findings and Recommendations of the Executive Director

and July 22, 2021, Melina Tineo responded on the Custodian's behalf extending the time to respond to the Complainant's OPRA request. On August 30, 2021, Ms. Tineo responded on the Custodian's behalf in writing stating that the Borough of Leonia ("Borough") does not have a document reflecting the requested information, and she was not obligated to create a record to satisfy an OPRA request. Ms. Tineo further stated that while the Borough may possess some of the requested information in electronic format, creating a new file containing the information would cause an extreme disruption to the Borough's operations. Ms. Tineo stated that if the Complainant wanted copies of the payroll registers, the Borough reserved the right to impose a special service charge.

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 records did not provide the reasons for separation. The Complainant further stated that the time for compliance had expired.

The Complainant requested that the GRC compel the Custodian to comply fully with the OPRA request and award counsel fees.

Statement of Information:

On November 3, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on May 6, 2021. The Custodian certified that the Borough's Finance Department determined they did not possess responsive records. The Custodian then certified that the Finance Department reached out to the Borough's payroll company, ADS, to determine if such information could be collected. The Custodian certified that ADS advised that the Borough did not have digital records dating back to 2002, but paper records exist from 2002-2007, as well as some digital records from 2008 to 2017. The Custodian certified that on August 30, 2021, Ms. Tineo responded to the Complainant.

The Custodian further certified that ADS advised it would take hours of labor and three (3) to four (4) weeks to compile responsive records in its possession. The Custodian also certified that while the Borough possessed records from five (5) years or earlier, they did not contain all the requested information and would likely require numerous redactions.

The Custodian argued that the Complainant's OPRA request channels the "personnel records" exemption under N.J.S.A. 47:1A-10. The Custodian asserted that if the Complainant had sought a specific record containing the reason for separation, the Borough would have been obligated to produce same. The Custodian argued instead that the Complainant failed to specifically identify government records the Borough could produce via a general search. Therefore, the Custodian argued that the Complainant's request was invalid under OPRA. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007).

The Custodian contended that the Complainant's request was more akin to a discovery demand rather than an OPRA request and was a textbook example of an OPRA request that requires the Custodian to perform research to fulfill. The Custodian argued that OPRA did not require her to conduct research. See Sussex Commons Assocs., LLC v. Rutgers Univ., 210 N.J. 531, 544 (2012); Matthews v. City of Atlantic City, GRC Complaint No. 2008-123 (Feb. 2009).

The Custodian asserted that the Borough provided a suggestion to the Complainant on how he could conduct his own research to locate the responsive information. The Custodian nevertheless maintained that she was not required to utilize taxpayer resources to conduct research on the Complainant's behalf.

The Custodian next contended that since the Borough's records custodian certified that no records responsive exist and that obtaining the information would require research, the certification should be dispositive to the GRC. See Caldwell v. Salem Cty. Special Servs. School Dist., GRC Complaint No. 2013-318 (July 2014); Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

The Custodian finally noted that the Complainant and Complainant's Counsel are the same person, and therefore not entitled to an attorney fee award in the event the Complainant is a prevailing party.

Additional Submissions:

On November 3, 2021, the Complainant submitted a brief in response to the Complainant's SOI. The Complainant asserted that the Custodian failed to provide the "real reasons" for separation in response to his OPRA request.

The Complainant initially argued that the terms "terminated", "retired", or "resigned," did not sufficiently provide the "reason for separation" because they were merely types of employment separations and did not adequately describe the underlying basis thereof. The Complainant argued that the "reason" for separation was likely located within a separate document constituting a government record, and the Custodian was obligated to retrieve that record, rather than create a spreadsheet or list containing the words "terminated", "retired", or "resigned."

The Complainant next asserted that in many instances where a police officer is charged for crimes, they may enter a plea agreement which may require them to leave the police department or be removed from employment because of a conviction. The Complainant argued that it was insufficient for the Custodian to merely state the terms "retired", "resigned", or "terminated" as the reason for separation if the "real reason" was that the officer was compelled to separate as part of a plea agreement or sentence. The Complainant thus argued that the Custodian violated OPRA by not providing the "real reasons" for any of the separations listed.

The Complainant asserted that a guilty plea agreement between an officer and prosecutor is akin to a settlement agreement normally entered into in civil proceedings. Libertarians, 465 N.J. Super. 11. The Complainant argued that civil settlement agreements are subject to OPRA, and therefore guilty plea agreements should also be subject to OPRA in accordance with Libertarians.

The Complainant contended that the Borough did not want to provide the “real reasons” for separation due to the pervasive culture and predisposition to protect officers convicted of misconduct. The Complainant argued that providing single word descriptions was only partially truthful and did not promote OPRA’s goal of transparency.

The Complainant asserted that as an example of police departments’ culture, he noted that in response to a similar OPRA request, Millville Police Department stated that two (2) officers “resigned” from the department. The Complainant asserted that in fact the two (2) officers pleaded guilty to criminal charges and as part of the agreement and sentencing they were required to be separated from the department.

The Complainant requested that the GRC compel the Custodian comply fully and truthfully with the OPRA request. The Complainant also requested that the GRC declare the Complainant a prevailing party and award counsel fees.⁶

On May 15, 2024, the GRC requested additional information from the Custodian. Specifically, the GRC inquired whether: 1) the Custodian conducted a search for agreements with separated officers at the time of the request; 2) if a search was conducted, whether agreements were located; and 3) if no search was conducted, the Custodian should perform a search and certify whether any responsive agreements were located. That same day, Custodian’s Counsel replied to the GRC seeking an extension until June 4, 2024, which the GRC granted.

On June 3, 2024, the current Custodian responded to the GRC’s request for additional information, providing a certification. The current Custodian certified that Custodian’s Counsel first contacted the Chief and Captain of the Leonia Police Department (“LPD”), who informed that LPD conducted a search for responsive agreements but did not locate any such records. The current Custodian also certified that the Borough’s Administrator searched for responsive agreements at the time, but none were located. The current Custodian further certified that he contacted the Borough’s Risk Management firm who informed him that they also conducted a search for responsive agreements at the time of the request, but none were located.

Analysis

Sufficiency of Response

OPRA provides that if a “custodian is unable to comply with a request for access, the custodian *shall indicate the specific basis therefor* . . . on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5(g) (emphasis added). In Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that “. . . [t]he Custodian’s response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).” See also Lenchitz v.

⁶ The Complainant further noted that access to the records should have been granted under the “common law ‘right to access public records’.” However, the GRC does not have the authority to address a requestor’s common law right to access records. N.J.S.A. 47:1A-7(b); Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013); Kelly v. N.J. Dep’t of Transp., GRC Complaint No. 2010-215 (November 2011). Thus, the GRC cannot address any common law right of access to the requested records.

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Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Upon review, the GRC is satisfied that the Custodian provided an insufficient response. Here, the Custodian responded to the Complainant's OPRA request denying access to the request portion seeking personnel information. However, the Custodian's response did not indicate whether any "agreement" existed between the Borough and the officers. It was not until the GRC's first request for additional information that the current Custodian certified that various officials conducted a search for any "agreement" between the Borough and separated officers and that no records were located. The facts here are on point with those in Paff; thus, it follows there was an insufficient response in the instant complaint.

Therefore, the Custodian's August 31, 2021 response was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff, GRC 2007-272; Lenchitz, GRC 2012-265. Specifically, the Custodian failed to indicate whether responsive settlements existed between the Borough and any separated police officer.

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);⁷ 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 v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). 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).

Names, Date of Hire, Date of Separation and Reason for Separation, Salary, Payroll Record, Amount and Type of Pension

Regarding requests seeking information or asking questions, there are instances in OPRA specifically identifies pieces of information as a “government record” under OPRA. By way of example, in Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010), the Council determined that “name, title, position, salary, payroll record and length of service” was information specifically considered to be a “government record” under N.J.S.A. 47:1A-10 (“Section 10”). The Council thus held that the complainant’s March 25, 2009, request for “[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009” was a valid request pursuant to OPRA. Id. at 5.

Additionally, prior GRC case law supports the disclosure of database information regarding personnel actions. See Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). Further, the Council has previously required that responding to an OPRA request for personnel information requires a custodian to provide the most comprehensive records containing the responsive information. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012).

Here, the Complainant requested in part Section 10 information on separated police officers from 2002 to 2017. The Custodian responded to the Complainant stating the Borough did not possess a record containing the information and was not obligated to create one. In the SOI, the Custodian argued that responding to the request required conducting research, which she was not obligated to perform under OPRA.

Upon review, the evidence is clear that the Custodian improperly determined that this portion of the request was invalid. In accordance with Danis, the Complainant’s request for Section 10 information constituted a “government record” under N.J.S.A. 47:1A-6. Notwithstanding whether the information was within several records or in an electronic database, the Custodian was

⁷ 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 Leonia (Bergen), 2021-242 – Findings and Recommendations of the Executive Director

obligated to provide the most comprehensive records containing the responsive information. See Valdes, GRC 2011-64 and Matthews, GRC 2008-123.

Therefore, the Custodian has not borne her burden of proving she lawfully denied access to the Complainant's OPRA request for the "Names, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension" of police officers who separated from the Borough between 2002 and 2017. N.J.S.A. 47:1A-6; Danis, GRC 2009-156; Valdes, GRC 2011-64; Matthews, GRC 2008-123. The current Custodian shall identify, locate, and produce the requested personnel information, either via an electronic database or via the most comprehensive records containing same. N.J.S.A. 47:1A-10. If no responsive information can be located, the current Custodian shall certify to same.

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.

Agreements

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, in addition to the requested personnel information, the Complainant sought any "agreement" between the Borough and any separated officer that would contain the "reason for separation." In response to the GRC's request for additional information, the current Custodian certified and confirmed that no other records exist at the time of the request, inclusive of any agreements. Additionally, the Complainant failed to present any evidence that the Borough possessed same at the time of the request, or to refute the Custodian's certification.

Accordingly, notwithstanding the Custodian's insufficient response, she has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking any "agreement" between the Borough and separated officers. Specifically, the current Custodian certified, and the record reflects, that no such records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Prevailing Party Attorney's Fees

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's August 31, 2021 response was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Specifically, the Custodian failed to indicate whether responsive settlements existed between the Borough of Leonia and any separated police officer.
2. The Custodian has not borne her burden of proving she lawfully denied access to the Complainant's OPRA request for the "Names, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension" of police officers who separated from the Borough of Leonia between 2002 and 2017. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). The current Custodian shall identify, locate, and produce the requested personnel information, either via an electronic database or via the most comprehensive records containing same. N.J.S.A. 47:1A-10. If no responsive information can be located, the current Custodian shall certify to same.
3. **The Custodian shall comply with conclusion No. 2 above within ten (10) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁸ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁹ to the Executive Director.¹⁰**
4. Notwithstanding the Custodian's insufficient response, she has borne her burden of proof that she lawfully denied access to the Complainant's OPRA request seeking any "agreement" between the Borough of Leonia and separated officers. Specifically, the current Custodian certified, and the record reflects, that no such records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado, Staff Attorney

June 18, 2024

⁸ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

¹⁰ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

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