



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**April 25, 2023 Government Records Council Meeting**

Tisha Adams, Esq.  
(o/b/o Maurice Bullock)  
Complainant  
v.  
City of Newark (Essex)  
Custodian of Record

Complaint No. 2021-262

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. Because Ms. Cintron failed to successfully forward the Complainant’s September 23, 2021 OPRA request to the Custodian or direct the Complainant to submit the OPRA request directly to the Custodian, she has violated N.J.S.A. 47:1A-5(h). See Kossup v. City of Newark Police Dep’t, GRC Complaint No. 2006-174 (February 2007).
2. The Complainant request item Nos. 1 and 3 are invalid because they required research to locate the responsive records. Carter v. N.J. Dep’t of Cmty. Affairs, Div. of Local Gov’t Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. Dec. 10, 2019); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012). Further, the Complainant’s request item Nos. 2 and 4 through 8 are invalid because they failed to seek an identifiable government record. See MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to the subject OPRA request because each item was ultimately invalid. N.J.S.A. 47:1A-6.
3. 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 (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, 71 (2008). Specifically, the Complainant’s request is wholly invalid because it required research and failed to identify specific records. 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. 432, and Mason, 196 N.J. 51.

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**

**Tisha Adams, Esq.<sup>1</sup>  
(On Behalf of Maurice Bullock)  
Complainant**

**GRC Complaint No. 2021-262**

v.

**City of Newark (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies via U.S. mail of:

1. Recording of every telephone call that City of Newark (“City”) employee Orlando Aree made to radio dispatch operators in August 2021.
2. “[R]ecords setting forth” the arbitration award and/or settlement amount the City paid to former employee Arthur Mauriello.
3. Every lawsuit filed by a City employee against Mayor Ras Baraka, former and current employees Anthony F. Ambrose, Raul Malave, Donald Cocchi, Michael Quinn, Mr. Aree, John G. Centanni, Ray Irizarry, Giovanni Guida, Anthony Tarantino, Norman J. Esparolini, and Jose Osorio from January 1, 2014 through September 23, 2021.
4. “[R]ecords setting forth” all settlement amounts paid to current and former employees from January 20, 2021 through September 23, 2021.
5. “[R]ecords setting forth” the racial makeup of individuals promoted to the ranks of deputy chief or battalion chiefs in Newark Fire Department (“NFD”) from January 1, 2014 through September 23, 2021.
6. “[R]ecords setting forth” the racial makeup of individuals hired by NFD from January 1, 2014 through September 23, 2021.
7. “[R]ecords setting forth” the racial makeup of individuals fired by NFD from January 1, 2014 through September 23, 2021.
8. “[R]ecords setting forth” the racial makeup of individuals disciplined by NFD from January 1, 2014 through September 23, 2021.

**Custodian of Record:** Kenneth Louis  
**Request Received by Custodian:** None  
**Response Made by Custodian:** None  
**GRC Complaint Received:** November 3, 2021

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<sup>1</sup> The Complainant is representing her client.

<sup>2</sup> Represented by Corporation Counsel Kenyatta K. Stewart, Esq. (Newark, NJ).

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## **Background**<sup>3</sup>

### Request and Response:

On September 23, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, the Complainant received a “Read” receipt notifying her that OPRA Unit staff member Ilsa Cintron read her e-mail.

### Denial of Access Complaint:

On November 3, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the City “blatantly ignored” her OPRA request. The Complainant argued that she received a “Read” receipt from Ms. Cintron on September 24, 2021 at 4:52 p.m. and never received a response within seven (7) business days thereafter. N.J.S.A. 47:1A-5(i). The Complainant noted that although OPRA contained a response time abeyance for public health emergencies, P.L. 2021, c. 104 required custodians to recognize normal response time frames unless the OPRA request sought records related to that agency’s COVID-19 response. The Complainant argued that no such records are at issue here, and the City has violated OPRA. The Complainant also sought prevailing party attorney’s fees. N.J.S.A. 47:1A-6.

### Statement of Information:

On November 14, 2021, Deputy City Clerk Kathleen Marchetti filed a Statement of Information (“SOI”) on behalf of the Custodian<sup>4</sup> and attaching a legal certification from the City’s Interim Manager of Information Technology (“IT”) Sherronda Carroll. Ms. Marchetti certified that the Custodian did not receive the Complainant’s OPRA request until receipt of the Denial of Access Complaint. Ms. Marchetti certified that the Complainant’s original OPRA request e-mail was sent directly to the City’s Spam folder. See Carroll Cert. ¶ 5. Ms. Marchetti affirmed that Ms. Cintron attempted to access the e-mail with no success and subsequently attempted to “forward the e-mail from Spam to the Inbox.” Ms. Marchetti asserted that “unbeknownst to Ms. Cintron,” the e-mail was not forwarded and remained in quarantine. See Carroll Cert. ¶ 6-7.

Ms. Marchetti argued that no unlawful denial of access occurred because the City never received the subject OPRA request. N.J.S.A. 47:1A-5(g), (h). Ms. Marchetti asserted that the facts here were like those in Shapiro v. City of Newark (Essex), GRC Complaint No. 2015-79 (February 2016), where the subject OPRA request was left in an unopened package. Ms. Marchetti argued that because the City’s staff never saw the OPRA request, they could not respond to it; finding in the alternative would “undermine OPRA, GRC precedent, and . . . the collaboration between requestor and government agency that OPRA envisions.” See Mason v. City of Hoboken, 196 N.J. 51, 78 (2008).

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<sup>3</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.

<sup>4</sup> Custodian’s Counsel advised the GRC that the Custodian was unavailable on medical leave.

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Ms. Marchetti next argued that the OPRA request sought personnel records, were invalid, or would require additional time beyond the statutory time frame to respond. Ms. Marchetti argued that the item seeking the racial composition of employees disciplined could fall within the personnel exemption. N.J.S.A. 47:1A-10; Lotito v. N.J. Dep't of Labor, Human Res., GRC Complaint No. 2013-65 (March 2014). Ms. Marchetti further argued that each item would require inspection of every record, a determination of whether they applied to the individuals, and a secondary search of additional files to find those potentially responsive to the OPRA request. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005). Ms. Marchetti argued that the item seeking dispatch calls from Mr. Aree for one (1) month would require the City to first determine the meaning of the term “dispatch operators,” as the term could include several different lines, and would require clarification by the Complainant. Ms. Marchetti further argued that the item seeking lawsuits filed against several employees over seven (7) years would require significant research not required under OPRA. Ms. Marchetti argued that she would have to review every complaint filed during the time period to determine whether the defendants therein were identified in the OPRA request item. Ms. Marchetti argued that she would then have to determine whether the plaintiff was a former or current City employee and then whether the filing related to their employment.

Ms. Marchetti finally argued that the Complainant is not a prevailing party entitled to an award of attorney’s fees. Ms. Marchetti argued that the Mason Court did not award attorney’s fees where records were not disclosed due to “simple human error.” Ms. Marchetti contended that because the City never received the subject OPRA request, and because the City was not provided an opportunity to address the controversy prior to the filing of this complainant, it cannot be said that the Complainant can prevail in this action.

### Analysis

#### Failure to Forward or Direct Request

OPRA further provides that “[a]ny officer or *employee* of a public agency *who receives a request* for access to a government record *shall forward the request to the custodian* of the record or *direct the requestor to the custodian* of the record. N.J.S.A. 47:1A-5(h) (emphasis added).

In Kossup v. City of Newark Police Dep't, GRC Complaint No. 2006-174 (February 2007), the complainant filed a Denial of Access Complaint after not receiving a response from the custodian. On October 4, 2006, OPRA Manager Joyce Lanier asserted that the custodian never received the request because it was sent directly to Lieutenant Caroline Clark of the City of Newark Police Department. Based on the facts presented, the Council held that “. . . [because] the Newark Police Department employee, [Lt. Clark] did not forward the Complainant’s request form or direct the Complainant to the [Custodian], . . . [Lt. Clark] has violated N.J.S.A. 47:1A-5(h).” Id. at 5. See also Morgano v. N.J. Office of the Pub. Defender, Essex Cnty., GRC Complaint No. 2008-79 (July 2008) (citing Mourning v. Dep't of Corr., GRC Complaint No. 2006-75 (August 2006); Vessio v. N.J. Dep't of Cmty. Affairs, Div. of Fire Safety, GRC Complaint No. 2007-63 (May 2007)); Redd v. Franklin Twp. Pub. Sch. (Somerset), GRC Complaint No. 2014-185 (February 2015).

In the instant matter, the Complainant submitted her OPRA request via e-mail on September 23, 2021 and did not receive a response. As part of the Denial of Access Complaint, the Complainant noted that she received a “Read” receipt from Ms. Cintron, but no response thereafter. In the SOI, Ms. Marchetti certified that the Custodian never received the Complainant’s OPRA request until receiving the Denial of Access Complaint. Ms. Marchetti certified that the OPRA request went into the City’s Spam folder and efforts by Ms. Cintron to remove it from that folder were not successful. Ms. Marchetti argued that Shapiro, GRC 2015-79 applied here because City staff never accessed the subject request; a finding in the alternative would undermine “OPRA, GRC precedent, and . . . the collaboration between requestor and government agency that OPRA envisions.” Mason, 196 N.J. at 78.

Upon review, the GRC is persuaded that Ms. Cintron violated N.J.S.A. 47:1A-5(h) by failing to fulfill her obligations set forth therein. Specifically, Ms. Cintron made two (2) attempts to remove the Complainant’s OPRA request from the City’s Spam folder. However, after the second attempt failed “unbeknownst” to her, no further effort was made to contact the Complainant to apprise her of the issue prior to this complaint filing. Ms. Cintron’s actions clearly show that she recognized her statutory obligations to adhere to N.J.S.A. 47:1A-5(h), but her limited actions upon identifying the OPRA request in the Spam folder create the violation.<sup>5</sup> Thus, Ms. Cintron violated N.J.S.A. 47:1A-5(h) for failing to forward the Complainant’s request or direct the Complainant to the Custodian, as required under OPRA.

Further, Ms. Marchetti’s interpretation of Shapiro, GRC 2015-79 is in error: the Council did find that a violation of N.J.S.A. 47:1A-5(h) occurred there. The complainant twice submitted an OPRA request via Fed Ex and signed for by generic location. While noting that no evidence existed that the unidentified individuals receiving the packages could have known that an OPRA request was contained therein, the Council still found that a potential N.J.S.A. 47:1A-5(h) violation occurred. However, the Council was unable to identify the individual or individuals who violated OPRA because each receipt contained a location and not an employee name. The facts here contain more information than in Shapiro because it is clear the request was an OPRA request, and that Ms. Cintron received it.

Therefore, because Ms. Cintron failed to successfully forward the Complainant’s September 23, 2021 OPRA request to the Custodian or direct the Complainant to submit the OPRA request directly to the Custodian, she has violated N.J.S.A. 47:1A-5(h). See Kossup, GRC 2006-174.

### **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.*

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<sup>5</sup> Alternative means of addressing the request could have included calling or e-mailing the Complainant directly to advise of the issue or seeking assistance from the City’s IT personnel. There is no evidence in the record indicating that these additional actions occurred.

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*Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.*

[MAG, 375 N.J. Super. at 546 (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., 381 N.J. Super. at 37;<sup>6</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. 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).

Regarding generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” *Id.* at 539-540. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. *See also* Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid);

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<sup>6</sup> Affirmed on appeal regarding Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004). Tisha Adams, Esq. (On Behalf of Maurice Bullock) v. City of Newark (Essex, 2021-262 – Findings and Recommendations of the Executive Director

Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking “[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor’s Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant’s request pursuant to the Superior Court’s decisions in [MAG], [Bent] and the Council’s decisions in Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (February 2008).

[Id. See also Schulz v. N.J. State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking “all documents” was overly broad and thus invalid).]

Regarding requests requiring research, the distinction between search and research can be fact-sensitive at times. That is, there are instances where the very specificity of a request requires only a search, as the case would be with OPRA requests for communications properly containing all three (3) criteria set forth in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-7 (April 2010).<sup>7</sup> To that end, the Council has provided guidance on how requests containing the Elcavage criteria do not require research:

[A] valid OPRA request requires a search, not research. An OPRA request is thus only valid if the subject of the request can be readily identifiable based on the request. Whether a subject can be readily identifiable will need to be made on a case-by-case basis. When it comes to e-mails or documents stored on a computer, a simple keyword search may be sufficient to identify any records that may be responsive to a request. As to correspondence, a custodian may be required to search an appropriate file relevant to the subject. In both cases, e-mails and correspondence, a completed “subject” or “regarding” line may be sufficient to determine whether the record relates to the described subject. Again, what will be sufficient to determine a proper search will depend on how detailed the OPRA request is, and will differ on a case-by-case basis. What a custodian is not required

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<sup>7</sup> In Elcavage, the Council held that a proper request for communications must include: 1) the senders and/or recipients; 2) date or range of dates; and 3) subject or content.  
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to do, however, is to actually read through numerous e-mails and correspondence to determine if same is responsive: in other words, conduct research.

[Verry v. Borough of South Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013).]

Additionally, the court in Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), evaluated a request for “[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. The Appellate Division determined that the request was not overly broad because it sought a specific type of document, despite failing to specify a particular case to which such document pertained. Id. at 515-16. Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), found a request for communications regarding 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. 429 N.J. Super. at 176.

Conversely, there are instances where a request can be specific enough to induce research, thus rendering it invalid. For instance, in Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012), the complainant submitted four (4) OPRA requests seeking copies of meeting minutes containing motions to approve other minutes. The Council, citing Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC Complaint No. 2008-258 (August 2009) and Ray v. Freedom Academy Charter Sch. (Camden), GRC Complaint No. 2009-185 (August 2010), determined that the requests were overly broad:

[S]aid requests do not specify the date or time frame of the minutes sought. Rather, the requests seek those minutes at which the UCBOE motioned to approve meeting minutes for four (4) other meetings. Similar to the facts of both Taylor and Ray, the requests herein *seek minutes that refer to a topic and would require the Custodian to research the UCBOE’s meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant’s requests . . .* because the Complainant’s four (4) requests for minutes “that include a motion made by the Union City Board of Education to approve the minutes” from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant’s requests are invalid under OPRA.

[Valdes, GRC 2011-147, *et seq.* (emphasis added) (citing N.J. Builders Ass’n, 390 N.J. Super. at 180; Bent, 381 N.J. Super. 30 (App. Div. 2005); MAG, 375 N.J. Super. at 546; Schuler, GRC 2007-151; Donato, GRC 2005-182. See also Valdes v. Gov’t Records Council, GRC Complaint No. 2013-278 (September 2014)).]

Additionally, in Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 237 (App. Div. 2015), the court held that plaintiff’s request was invalid because it required research. In reaching this conclusion, the court reasoned that:

The custodian in this case would have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher.

[Id. at 237. See also Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. Dec. 10, 2019) (affirming Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., GRC Complaint No. 2016-262 (August 2018)).]

In the matter before the Council, the Complainant submitted an eight (8) item OPRA request: item No. 1 seeks calls for a month-long period from Ms. Aree to “Newark dispatch operators;” item No. 3 seeks lawsuits filed by employees against a several current and former officials and employees over a seven plus year time period; and item Nos. 2 and 4 through 8 seek “records setting forth” arbitration awards and settlements, settlement amounts, and demographics related to promotions, hirings, firings, and discipline. In the SOI, Ms. Marchetti contended that the Complainant’s OPRA request would require research and detailed some of the actions she believed necessary to attempt to locate responsive records.

Item No 1 seeks access to recording of calls made by Mr. Aree to “Newark dispatch operators” for a month-long period. The Complainant has identified a specific record, but the GRC agrees with the Custodian’s assertion that the reference to “dispatch” could mean any number of different City lines referred to as “dispatch” lines. As for item No. 3, request for lawsuits seems specific; however, the additional conditions set by the Complainant require research. Specifically, the Custodian would have to review every lawsuit filed over the seven plus years and then determine whether the filer was a City employee. This would require the Custodian cross-reference every filer’s name with a roster of City employees, likely past and present, to determine if those lawsuits meet the criteria set forth by the Complainant. The actions required by the Custodian here is like those contemplated in Valdes, GRC 2011-147 and Carter, 2019 N.J. Super. Unpub. LEXIS 2510 (affirming the Council’s decision that a request seeking lawsuit filed about a violation of a particular statute was invalid).

Further, item Nos. 2 and 4 through 8 on their face would require research of the full universe of the Borough’s files to locate responsive records and/or syphon information. However, the Courts and Council have long held that a custodian is not required to perform research and not required to respond to requests seeking generic records not otherwise identifying a specific “government record” under OPRA. Each of the identified items would require research to determine which records within the City’s universe may contain information related to the topics and statistics identified by the Complainant and is thus invalid. Such a finding is consistent with all prevailing case law, including MAG, 375 N.J. Super. at 546 and Feiler-Jampel, GRC 2007-190.

Accordingly, the Complainant request item Nos. 1 and 3 are invalid because they required research to locate the responsive records. Carter, 2019 N.J. Super. Unpub LEXIS 2510; Valdes,

GRC 2011-147. Further, the Complainant's request item Nos. 2 and 4 through 8 are invalid because they failed to seek an identifiable government record. See MAG, 375 N.J. Super. at 546; Feiler-Jampel, GRC 2007-190. Thus, the Custodian lawfully denied access to the subject OPRA request because each item was ultimately invalid. N.J.S.A. 47:1A-6.

### **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 (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.

[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.]

In this matter, the Complainant filed the instant complaint on behalf of her client challenging the Custodian's “deemed” denial of access. While the Council has found that a violation of N.J.S.A. 47:1A-5(h) occurred, it has been determined that the Complainant's request is invalid because it required research and failed to identify specific records. Notwithstanding the technical violation of OPRA, this complaint did not bring about any change in the Custodian's conduct through the disclosure of records. Thus, the Complainant is not a prevailing party and is thus not entitled to an award of attorney's fees. See Carter v. Franklin Fire Dist. No. 2 (Somerset), GRC Complaint No. 2012-101 (April 2013) (holding that the GRC “did not order disclosure of any records and the Custodian's technical violation of OPRA did not represent a change in the Custodian's conduct.”).

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. 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. 51. Specifically, the Complainant's request is wholly invalid because it required research and failed to identify specific records. 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. 432, and Mason, 196 N.J. 51.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Because Ms. Cintron failed to successfully forward the Complainant's September 23, 2021 OPRA request to the Custodian or direct the Complainant to submit the OPRA request directly to the Custodian, she has violated N.J.S.A. 47:1A-5(h). See Kossup v. City of Newark Police Dep't, GRC Complaint No. 2006-174 (February 2007).
2. The Complainant request item Nos. 1 and 3 are invalid because they required research to locate the responsive records. Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. Dec. 10, 2019); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-147, *et seq.* (July 2012). Further, the Complainant's request item Nos. 2 and 4 through 8 are invalid because they failed to seek an identifiable government record. See MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 549 (App. Div. 2005); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Thus, the Custodian lawfully denied access to the subject OPRA request because each item was ultimately invalid. N.J.S.A. 47:1A-6.
3. 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 (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, 71 (2008). Specifically, the Complainant's request is wholly invalid because it required research and failed to identify specific records. 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. 432, and Mason, 196 N.J. 51.

Prepared By: Frank F. Caruso  
Executive Director

April 15, 2023