



## State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lieutenant Governor*

JACQUELYN A. SUÁREZ  
*Acting Commissioner*

### FINAL DECISION

#### October 3, 2023 Government Records Council Meeting

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

Complaint No. 2021-277

v.

Ridgewood Police Department (Bergen)  
Custodian of Record

At the October 3, 2023 public meeting, the Government Records Council (“Council”) considered the September 26, 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 Custodian’s November 2, 2021 response is insufficient because the Custodian failed to address each request item. N.J.S.A. 47:1A-5(g). See also Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Custodian unlawfully denied access to the portion of the Complainant’s OPRA request seeking agreements between the Village of Ridgewood and former police officers. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008). Specifically, the Custodian’s failure to conduct any initial search for responsive records resulted in an insufficient search. However, the GRC declines to order disclosure of the agreements because the Custodian disclosed same to the Complainant on September 8, 2023 as part of her response to the GRC’s request for additional information.
3. The Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Custodian located responsive records after the instant complaint was filed upon conducting an initial search. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney’s fees,**

**Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 3<sup>rd</sup> Day of October 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: October 10, 2023**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
October 3, 2023 Council Meeting**

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

**GRC Complaint No. 2021-277**

v.

**Ridgewood Police Department (Bergen)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** 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 2014 to the present. N.J.S.A. 47:1A-10.

- a. This request includes any agreement entered with each one of the separated police officer(s).
- b. 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.
- c. Some police officers separate due to internal affairs investigations within the police departments.

**Custodian of Record:** Heather Mailander

**Request Received by Custodian:** October 20, 2021

**Response Made by Custodian:** November 2, 2021

**GRC Complaint Received:** November 8, 2021

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

**Request and Response:**

On, October 20, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 22, 2021, Eileen Young responded on the Custodian’s behalf requesting clarification. Ms. Young asked for specification on which departments the Complainant sought the requested information. On

---

<sup>1</sup> The Complainant represents the African American Data & Research Institute.

<sup>2</sup> Represented by Matthew S. Rogers, Esq. (Ridgewood, NJ).

<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.

Rotimi Owoh, Esq. (on behalf of African American Data & Research Institute) v. Ridgewood Police Department (Bergen), 2021-277 – Findings and Recommendations of the Executive Director

October 25, 2021, the Complainant e-mailed Ms. Young, stating he sought information on law enforcement or police personnel. On November 2, 2021, Eileen Young responded on the Custodian's behalf in writing providing a list containing the requested information, noting officers were either "retired" or "resigned".

#### Denial of Access Complaint:

On November 8, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that the provided records did not provide the reasons for separation. The Complainant contended that simply stating "terminated", "resigned", or "retired," was insufficient under N.J.S.A. 47:1A-10.

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 30, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on October 20, 2021, which was addressed by Ms. Young. The Custodian certified that Ms. Young e-mailed Dana O'Neill of the Village of Ridgewood's ("Village's") Payroll Department, and Robert G. Rooney, the Village's CFO, to perform a search for responsive records. The Custodian certified that Ms. Young requested clarification from the Complainant on October 22, 2021, and received a response on October 26, 2021. The Custodian certified that Ms. Young received a two-page document from Ms. O'Neill containing the responsive personnel information. The Custodian affirmed that Ms. Young then provided the Complainant with the responsive record on November 2, 2021.

The Custodian, through Counsel, contended that she fulfilled her obligations under OPRA through a plain reading of N.J.S.A. 47:1A-10. The Custodian argued that the provided spreadsheet contained all the information requested by the Complainant, and she was not obligated to provide a description or detailed explanation for why officers were separated from the Village.

#### Additional Submissions:

On December 8, 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 the Village 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 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 the GRC declare the Complainant a prevailing party and award counsel fees.<sup>4</sup>

On August 15, 2023, the GRC submitted a request for additional information from the Custodian. Specifically, the GRC inquired whether the Custodian searched for and provided any “agreement” the Village entered with any separated police officers.

On August 18, 2023, the Custodian responded to the GRC’s request for additional information. The Custodian certified that at the time of the request, the Village conducted a search of separated police officers and the reasons why they separated. The Custodian certified that the Village did not conduct a search for any agreement relating to the officers because in each instance separation was listed as voluntary retirement based upon disability and/or years of service, or voluntary resignation. The Custodian therefore certified that no agreements were provided in response to the OPRA request.

On August 31, 2023, the GRC submitted an additional request for information from the

---

<sup>4</sup> 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.

Rotimi Owoh, Esq. (on behalf of African American Data & Research Institute) v. Ridgewood Police Department (Bergen), 2021-277 – Findings and Recommendations of the Executive Director

Custodian. Specifically, the GRC requested the Custodian to conduct a search for any responsive settlement agreements and to certify whether any were located. That same day, the Custodian requested an extension of time to respond, which the GRC granted until September 11, 2023.

On September 8, 2023, the Custodian responded to the GRC's second request for additional information. The Custodian certified that upon conducting a full search of the Village's records, she located two (2) settlement agreements between the Village and separated officers, and attached copies of same with her certification. The Custodian certified that no other responsive records exist.

## 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. 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 by providing responsive records attached to an e-mail. However, the e-mail failed to identify whether the Custodian was denying access to the portion of the OPRA request seeking agreements between the Village and separated officers. Instead, the Custodian's response lacked any indication as to which request item(s) the attached documents were responsive. It was not until the Custodian certified in the SOI that the records contained in the e-mail were responsive to the request item seeking disclosable personnel information under N.J.S.A. 47:1A-10. Further, it was not until the Custodian certified in the SOI that no search for “agreements” between the Village and separated officers was conducted at the time of the request. The facts here are on point with those Paff; thus, it follows there was an insufficient response in the instant complaint.

Therefore, the Custodian's November 2, 2021 response is insufficient because the Custodian failed to address each request item. N.J.S.A. 47:1A-5(g). See also Paff, GRC 2007-272.

### Sufficiency of Search

It is the custodian's responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian's response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant's OPRA request existed. The custodian certified that after receipt of the complainant's denial of access complaint, which contained e-mails responsive to the

complainant's request, the custodian conducted a second search and found records responsive to the complainant's request. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

In the instant matter, the Custodian certified in response to the GRC's initial request for additional information that no search was conducted for agreements between the Village and separated police officers, contending that the records indicating the reasons for separation listed them all as voluntary. The GRC thereafter requested the Custodian conduct a search for any agreements, and on September 8, 2023, the Custodian certified that she located two (2) agreements between the Village and separated officers. Therefore, the Custodian's initial search was incomplete since no search was conducted for a portion of the request. Schneble, GRC 2007-220.

Accordingly, the Custodian unlawfully denied access to the portion of the Complainant's OPRA request seeking agreements between the Village and former police officers. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. Specifically, the Custodian's failure to conduct any initial search for responsive records resulted in an insufficient search. However, the GRC declines to order disclosure of the agreements because the Custodian disclosed same to the Complainant on September 8, 2023 as part of her response to the GRC's request for additional information.

### **Prevailing Party Attorney's Fees**

OPRA provides that:

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

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

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

Additionally, the New Jersey Supreme Court has ruled on the issue of "prevailing party" attorney's fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, "which posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct" (quoting Buckhannon Bd. & Care Home v. West Virginia Dep't of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the

Supreme Court held that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” Id. at 603 (quoting Black’s Law Dictionary 1145 (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 “[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 2014 to present,” as well as any “agreements” providing the “reason for separation.” The Custodian provided a list which stated the “reason for separation” for the officers, along with the other personnel information, but did not indicate



whether any agreements existed. The Complainant then filed the instant complaint on November 8, 2021, asserting the Custodian failed to provide the “real reason” for the officers’ separations. In response to requests from the GRC for additional information, the Custodian located and disclosed two (2) settlement agreements responsive to the subject OPRA request.

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 provided an insufficient response by not indicating whether any agreements existed. Thereafter, the Custodian certified that no search was conducted for agreements at the time of the request, and upon conducting same in response to the GRC’s request for additional information, the Custodian located two (2) responsive agreements. 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>5</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 Custodian located responsive records after the instant complaint was filed upon conducting an initial search. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney’s fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

### Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s November 2, 2021 response is insufficient because the Custodian failed to address each request item. N.J.S.A. 47:1A-5(g). See also Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Custodian unlawfully denied access to the portion of the Complainant’s OPRA request seeking agreements between the Village of Ridgewood and former police officers. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008). Specifically, the Custodian’s failure to conduct any initial search for responsive records resulted in an insufficient search. However,

---

<sup>5</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) v. Ridgewood Police Department (Bergen), 2021-277 – Findings and Recommendations of the Executive Director

the GRC declines to order disclosure of the agreements because the Custodian disclosed same to the Complainant on September 8, 2023 as part of her response to the GRC's request for additional information.

3. The Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Custodian located responsive records after the instant complaint was filed upon conducting an initial search. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

Prepared By: Samuel A. Rosado  
Staff Attorney

September 26, 2023