



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

July 30, 2024 Government Records Council Meeting

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

Complaint No. 2021-287

v.
Mountainside Police Department (Union)
Custodian of Record

At the July 30, 2024 public meeting, the Government Records Council (“Council”) considered the July 23, 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 current Custodian did not fully comply with the Council’s October 3, 2023 Administrative Order. Specifically, although the current Custodian responded within the time frame providing records for *in camera* review, she did not provide certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the redacted portions of the settlement agreements containing compensatory, vacation, personal, and sick leave, as same fall within the definition of a “payroll record” and subject to disclosure. N.J.S.A. 47:1A-6; Palkowitz v. Hasbrouck Heights (Bergen), GRC Complaint No. 2013-199 (Intern Order dated February 24, 2014); Roarty v. Secaucus Bd. of Educ. (Hudson), GRC Complaint No. 2009-221 (January 2011); Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). However, the Council declines to order disclosure of the settlement agreements without redactions since the record demonstrates that the current Custodian provided same to the Complainant on August 8, 2022.
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 improperly redacted disclosable payroll records from the responsive agreements. 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 30th Day of July 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: August 1, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director
July 30, 2024 Council Meeting**

**Rotimi Owoh, Esq. (on Behalf of African American
Data & Research Institute)¹
Complainant**

GRC Complaint No. 2021-287

v.

**Mountainside Police Department (Union)²
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 who either resigned or retired or terminated or otherwise separated from 2014 to the present. N.J.S.A. 47:1A-10. This request includes any agreement entered with each one of the separated police officer(s).

- a. This request also includes any agreement entered with each one of the separated 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: Sue DiFrancesco³

Request Received by Custodian: October 19, 2021

Response Made by Custodian: October 22, 2021

GRC Complaint Received: November 10, 2021

Records Submitted for *In Camera* Examination: Agreements between separated officers and the police department from 2014 to present.

Background

Request and Response:

On October 14, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On October 22, 2021, the Custodian responded to the Complainant in writing, providing responsive records, including a list

¹ The Complainant represents the African American Data & Research Institute.

² Represented by Siobhan Beere, Esq., of Post Polak, P.A. (Roseland, NJ).

³ The current Records Custodian is Martha Lopez.

containing personnel information subject to disclosure under N.J.S.A. 47:1A-10. The Custodian also provided redacted agreements between separated officers and the Borough of Mountainside (“Borough”).

Denial of Access Complaint:

On November 10, 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 contended that simply stating “terminated”, “resigned”, or “retired,” was insufficient under N.J.S.A. 47:1A-10. The Complainant also asserted that the provided agreements were overly redacted.

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

Statement of Information:

On December 10, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on October 19, 2021. The Custodian certified that she responded in writing on October 22, 2021, providing the responsive record.

The Custodian first noted that the request was the same as previous OPRA requests received from the Complainant on April 28, 2021, and July 15, 2021, with the only substantive difference being the date range and whether other request items accompanied the request for personnel information and agreements. The Custodian asserted that nevertheless she provided the Complainant with the list containing the personnel subject to disclosure under N.J.S.A. 47:1A-10.

The Custodian next argued that the Appellate Division recently held that custodians were not required to provide additional information which details the circumstances surrounding an employee’s retired or resignation. See Libertarians for Transparent Gov’t v. Ocean Cnty. Prosecutor’s Office, 2018 N.J. Super. Unpub. LEXIS 25 (App. Div.), cert. denied, 235 N.J. 407 (2018).

The Custodian next asserted that the redactions to the agreements were valid. The Custodian asserted that the redactions were applied pursuant to attorney-client privilege, privacy, grievances, and under the Attorney General’s Guidelines for Internal Affairs Police & Procedures (“IAPP”). N.J.S.A. 47:1A-1, 1.1, 9(a).

The Custodian further asserted that this issue was directly addressed by the Appellate Division in Libertarians for Transparent Gov’t v. Cumberland Cnty., 465 N.J. Super. 11, 13 (App. Div. 2020), rev’d, 250 N.J. 46 (2022). The Custodian therefore argued that any agreements that may exist which resolved an internal affairs investigation would be exempt from disclosure.

The Custodian argued that the redactions were made in good faith to protect information deemed confidential pursuant to the IAPP. The Custodian also noted that the Complainant did not provide any clarification after receiving the response.

Additional Submissions:

On November 22, 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 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 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.⁴

October 3, 2023 Council Meeting:

At its October 3, 2023 public meeting, the Council considered the September 26, 2023 Administrative Order 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:

The GRC must conduct an *in camera* review of the responsive settlement agreements to determine the validity of the Custodian's assertion that those records were lawfully redacted under OPRA's exemptions for attorney-client privilege, privacy, and personnel records, as well as exemptions pursuant to other State statutes or regulations. N.J.S.A. 47:1A-1 to -10; see Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346, 355 (App. Div. 2005). **Thus, the Custodian shall deliver⁵ to the Council in a sealed envelope nine (9) copies of the requested unredacted settlements, nine (9) copies of the redacted settlements, a document or redaction index.⁶**

This is an Administrative Order requiring compliance within ten (10) business days after receipt thereof. The Custodian shall also simultaneously deliver⁷ certified confirmation of compliance with this Order, in accordance with N.J. Court Rules, R. 1:4-4,⁸ to the Executive Director.

Procedural History:

On October 5, 2023, the Council distributed its Administrative Order to all parties. On October 19, 2023, the current Custodian requested an extension of time until October 25, 2023 to respond to the Council's Order. That same day, the Government Records Council granted the Custodian's request.

On October 25, 2023, the current Custodian responded to the Council's Administrative Order, providing nine (9) redacted and unredacted copies of the requested settlement agreements for *in camera* review. Custodian's Counsel also provided certified confirmation of compliance with the Executive Director.

⁴ 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.

⁵ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

⁶ The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

⁷ 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.

⁸ "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."

Counsel certified that the redactions to the agreements were made in good faith to protect information considered confidential pursuant to the IAPP. Counsel also certified that the Custodian was guided by the prevailing caselaw at the time, Libertarians, 465 N.J. Super. 11. Counsel certified that the Appellate Division held that settlement agreements pertaining to internal disciplinary actions were not “government records” under OPRA, but instead personnel records not subject to disclosure pursuant to N.J.S.A. 47:1A-10. In the included index, Counsel also certified that some of the redactions were pursuant to the attorney client privilege and personal privacy. N.J.S.A. 47:1A-1.1.

Counsel then certified that after the Supreme Court overturned the Appellate Division in Libertarians, 250 N.J. 46, as well as its decision in Rivera v. Union Cnty. Prosecutor’s Office, 250 N.J. 124 (2022), the Complainant submitted another OPRA request on June 24, 2022, seeking in part the same records at issue in this matter. Counsel certified that in accordance thereof, the current Custodian provided the settlement agreements at issue to the Complainant unredacted on August 8, 2022, and is therefore in possession of same.

Analysis

Compliance

At its October 3, 2023 meeting, the Council ordered the Custodian to provide nine (9) redacted and unredacted copies of the requested settlement agreements and to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On October 5, 2023, the Council distributed its Administrative 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 October 23, 2023, accounting for the Election Day and Columbus Day holidays.

On October 19, 2023, the Counsel requested an extension of time to respond until October 25, 2023. That same day, the GRC granted the extension. On October 25, 2023, the date of the extended deadline, the Custodian responded to the Council’s Order, providing nine (9) redacted and unredacted copies of the requested settlement agreements. However, Custodian’s Counsel provided certified confirmation of compliance, and not the current Custodian.

Therefore, the current Custodian did not fully comply with the Council’s October 3, 2023 Administrative Order. Specifically, although the current Custodian responded within the time frame providing records for *in camera* review, she did not provide certified confirmation of compliance to the Executive Director.

Unlawful Denial of Access

The GRC first notes that Counsel certified that unredacted copies of the requested settlement agreements were provided to the Complainant on August 8, 2022 in response to a subsequent OPRA request seeking the same records, thereby negating the relief sought. Notwithstanding, for the purpose of determining whether the Complainant is a prevailing party, a

limited review of the redactions is necessary to determine whether same were proper at the time of the request.

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

OPRA provides that “[n]otwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency . . . shall not be considered a government record . . .” N.J.S.A. 47:1A-10. OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581 (2011). These include “an individual’s name, title, position, salary [and] *payroll record*.” Id. (emphasis added). See also Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004) (defining a “payroll record” for purposes of OPRA as records relating to payment of a public employee). Further, the Council has previously required that responding to an OPRA request for personnel information requires that a custodian 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); Richardson v. N.J. Office of the Attorney General, GRC Complaint No. 2014-277 (Interim Order dated May 26, 2015).

Moreover, the Council has repeatedly ordered disclosure of payroll records. For instance, in Roarty v. Secaucus Bd. of Educ. (Hudson), GRC Complaint No. 2009-221 (January 2011) the complainant sought access to, among other records, accumulated sick time. The Council applied its analysis in Jackson, GRC 2002-98 and determined that the requested sick time was a payroll record subject to disclosure. Id. at 9-10. In Palkowitz v. Hasbrouck Heights (Bergen), GRC Complaint No. 2013-199 (Interim Order dated February 24, 2014), the GRC expanded the definition of payroll record to include accumulated sick time.

In the instant matter, the Complainant sought in part the payroll records of each of the separated officers. The Custodian provided the Complainant with three (3) settlement agreements (hereinafter referred to as “Murphy”, “Huber”, and “Attanasio”) containing redactions on various grounds, among them OPRA’s protections for personnel information under N.J.S.A. 47:1A-10. Upon review of the redacted and unredacted records, all three (3) settlement agreements contained improper redactions.

Regarding the Murphy agreement, the Custodian redacted ¶ 2, subsections (c), (d), (e), and (f). Additionally, the Custodian redacted the latter half of ¶ 4 in both the Huber and Attanasio agreements. However, these paragraphs and subsections identify and reference each respective officer’s accrued compensatory, vacation, personal and sick leave. In accordance with Palkowitz, Roarty, and Jackson, such information constituted payroll records subject to disclosure.

Accordingly, the Custodian unlawfully denied access to the redacted portions of the settlement agreements containing compensatory, vacation, personal, and sick leave, as same fall

within the definition of a “payroll record” and subject to disclosure. N.J.S.A. 47:1A-6; Palkowitz, GRC 2013-199; Roarty, GRC 2009-221; Jackson, GRC 2002-98. However, the Council declines to order disclosure of the settlement agreements without redactions since the record demonstrates that the current Custodian provided same to the Complainant on August 8, 2022.

Prevailing Party Attorney’s Fees

OPRA provides that:

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

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

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

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct” (quoting Buckhannon Bd. & Care Home v. West Virginia Dep’t of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court held that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” Id. at 603 (quoting Black’s Law Dictionary 1145 (7th ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties . . .” Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863. Further, the Supreme Court expressed concern that the catalyst theory would spawn extra litigation over attorney's fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

However, the Court noted in Mason that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, 387 N.J. Super. at 429; see, e.g., Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). “But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” 196 N.J. at 73 (citations omitted).

The Mason Court accepted the application of the catalyst theory within the context of OPRA, stating that:

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6. Under the prior RTKL, “[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney's fee not to exceed \$500.00.” N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

[196 N.J. at 73-76.]

The Court in Mason, further held that:

[R]equestors are entitled to attorney's fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) “a factual causal nexus between plaintiff's litigation and the relief ultimately achieved”; and (2) “that the relief ultimately secured by plaintiffs had a basis in law.” Singer v. State, 95 N.J. 487, 495, cert. denied, New Jersey v. Singer, 469 U.S. 832 (1984).

[Id. at 76.]

Here, the Complainant sought in part the disclosable personnel information of officers who have separated from the Borough, along with any agreements between the officers and the Borough. In response, the Custodian provided three (3) settlement agreements between the Borough and three (3) officers, with redactions contained therein. The Complainant thereafter filed the instant complaint on November 10, 2021, asserting that the settlement agreements were overly redacted.

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. Counsel argued that the redactions were made in reliance upon the prevailing case law at the time, which held that such agreements were personnel records not subject to disclosure. Counsel thereafter asserted that such agreements were subsequently provided to the Complainant without redactions in response to a separate OPRA request submitted after Libertarians was overturned and after this complaint was filed. However, upon reviewing the redacted and unredacted agreements, the GRC finds that at least a portion of the redactions were improper since they withheld disclosable payroll records. Thus, although the Complainant already possesses the agreements without any redactions, the GRC would have ordered disclosure. 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.⁹

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. 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. 51. Specifically, the Custodian improperly redacted disclosable payroll records from the responsive agreements. 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. 432, and Mason, 196 N.J. 51. **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.**

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The current Custodian did not fully comply with the Council's October 3, 2023 Administrative Order. Specifically, although the current Custodian responded within the time frame providing records for *in camera* review, she did not provide certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the redacted portions of the settlement agreements containing compensatory, vacation, personal, and sick leave, as same fall within the definition of a "payroll record" and subject to disclosure. N.J.S.A. 47:1A-6; Palkowitz v. Hasbrouck Heights (Bergen), GRC Complaint No. 2013-199 (Intern Order dated February 24, 2014); Roarty v. Secaucus Bd. of Educ. (Hudson), GRC Complaint No. 2009-221 (January 2011); Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). However, the Council declines to order disclosure of the settlement agreements without redactions since the record demonstrates that the current Custodian provided same to the Complainant on August 8, 2022.
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 improperly redacted disclosable

⁹ 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).

payroll records from the responsive agreements. 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

July 23, 2024



NEW JERSEY GOVERNMENT RECORDS COUNCIL

Administrative Order – *In Camera* Review

**Rotimi Owoh, Esq. (On Behalf of African American
Data and Research Institute)
Complainant**

GRC Complaint No. 2021-287

v.

**Mountainside Police Department (Union)
Custodial Agency**

Custodian of Record: Susan DiFrancesco
Request Received by Custodian: October 19, 2021
GRC Complaint Received: November 10, 2021

Order: The GRC must conduct an *in camera* review of the responsive settlement agreements to determine the validity of the Custodian's assertion that those records were lawfully redacted under OPRA's exemptions for attorney-client privilege, privacy, and personnel records, as well as exemptions pursuant to other State statutes or regulations. N.J.S.A. 47:1A-1 to -10; see Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346, 355 (App. Div. 2005). **Thus, the Custodian shall deliver¹ to the Council in a sealed envelope nine (9) copies of the requested unredacted settlements, nine (9) copies of the redacted settlements, and a document or redaction index.²**

This is an Administrative Order requiring compliance within ten (10) business days after receipt thereof. The Custodian shall also simultaneously deliver³ certified confirmation of compliance with this Order, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.

Effective Date of Disposition: October 3, 2023

Prepared By: Samuel A. Rosado
Staff Attorney

Date: September 26, 2023

Distribution Date: October 5, 2023

¹ The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

² The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

³ 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.

⁴ "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."