



## State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS  
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PHILIP D. MURPHY  
Governor

TAHESHA L. WAY  
Lieutenant Governor

JACQUELYN A. SUÁREZ  
Acting Commissioner

### FINAL DECISION

#### November 8, 2023 Government Records Council Meeting

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

Complaint No. 2021-296

v.

Berkeley Township Police Department (Ocean)  
Custodian of Record

At the November 8, 2023 public meeting, the Government Records Council (“Council”) considered the October 31, 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 did not unlawfully deny access to the portion of the Complainant’s October 14, 2021 OPRA request seeking disclosable personnel information. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that Berkeley Township provided all responsive records containing the requested information. See Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
2. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking “agreement[s]” between Berkeley Township and separated officers. Specifically, the Custodian certified, and the record reflects, that no such records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
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, 432 (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, 76 (2008). Specifically, the Custodian certified that she provided the Complainant with all responsive records in Berkeley Township’s possession and that no agreements between the Township and separated officers exist. 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. at 432, and Mason, 196 N.J. at 76.

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 8<sup>th</sup> Day of November 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: November 13, 2023**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 8, 2023 Council Meeting**

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

**GRC Complaint No. 2021-296**

v.

**Berkeley Township Police Department (Ocean)<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:** Marcy Novellino

**Request Received by Custodian:** October 14, 2021

**Response Made by Custodian:** October 21, 2021; October 29, 2021; November 9, 2021

**GRC Complaint Received:** November 16, 2021

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

**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. October 15, 2021, Sandra Brelsford responded on behalf of the Custodian, requesting clarification on whether the request sought personnel information from all Berkeley Township (“Township”) employees, or from only police

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

<sup>2</sup> Represented by Robin La Blue, Esq., of Rothstein, Mandell, Strohm, Halm & Cipriani, P.C. (Toms River, 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.

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– Findings and Recommendations of the Executive Director

officers. On October 19, 2021, Ms. Brelsford again requested clarification from the Complainant. That same day, the Complainant responded to Ms. Brelsford stating, “police department.” On October 21, 2021, Ms. Brelsford sought an extension of time to respond until October 29, 2021.

On October 29, 2021, Ms. Brelsford responded on the Custodian’s behalf in writing providing a spreadsheet containing the requested personnel information. Ms. Brelsford also sought an additional extension until November 12, 2021, to provide a response to subparts a, b, and c of the request.

On November 6, 2021, the Complainant replied to the Custodian, stating that separations and reasons for separations were not provided. That same day, Ms. Brelsford responded to the Complainant, requesting confirmation that he received the Township’s October 29, 2021 response which included the extension of time to November 12, 2021 for the remainder of the request.

On November 8, 2021, Ms. Brelsford resubmitted the response to the Complainant’s OPRA request, noting that columns K, L, and M of the spreadsheet provided the separations and reasons for separations. Ms. Brelsford also reiterated the November 12, 2021 extension for the remaining request items.

On November 9, 2021, Ms. Brelsford responded to the remainder of the Complainant’s OPRA request, stating that no responsive records exist for subparts a and c. Ms. Brelsford also stated that for subpart b, Column M of the previously provided spreadsheet provided the information.

#### Denial of Access Complaint:

On November 16, 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.<sup>4</sup>

#### Statement of Information:

On December 16, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the Township received the Complainant’s OPRA request on October 14, 2021. The Custodian certified that her search included transferring the request to the Township’s Payroll Department, and they in turn provided the responsive record. The Custodian certified that Ms. Brelsford responded to the Complainant in writing on October 29, 2021, attaching the responsive spreadsheet. The Custodian also certified that Ms. Brelsford responded to the Complainant on November 9, 2021 stating that no records exist for subparts a and c, and that the spreadsheet provided the information requested in subpart b.

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<sup>4</sup> The Complainant asserted in the complaint that the last response from the Custodian was on October 29, 2021. Rotimi Owoh, Esq. (on Behalf of African American Data & Research Institute) v. Berkeley Township Police Department (Ocean), 2021-296 – Findings and Recommendations of the Executive Director

The Custodian initially argued that personnel information is generally exempt from OPRA barring certain exceptions. See N.J.S.A. 47:1A-10. The Custodian asserted that the document provided to the Complainant contained all the available information that is permitted to be disclosed pursuant to OPRA. The Custodian further asserted that OPRA did “not require the provision of the circumstances that may have caused an employee to choose to resign, the employee’s motivation for resigning, or anything beyond the reason for the employee’s ‘date of separation.’” Libertarians for Transparent Gov’t v. Ocean Cnty. Prosecutor’s Office, 2018 N.J. Super. Unpub. LEXIS 25, at \*11-12 (App. Div. 2018).

The Custodian also argued that the Township properly informed the Complainant that there were no separation agreements with any police officers separated from the Township between 2014 through the request date, nor were there officers who separated due to internal affairs investigations.

The Custodian argued that the Township properly responded to the Complainant’s OPRA request and requested the GRC to dismiss the matter.

### Analysis

#### Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

#### Personnel Information

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian’s certification that all such records were provided to the complainant. The Council held that the custodian’s certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian’s burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

In the instant matter, the Complainant requested the “[n]ames, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension of individuals who either resigned or retired or terminated or otherwise separated from 2014 to the present” on October 14, 2021. On October 29, 2021, Ms. Brelsford responded in writing providing a spreadsheet containing the requested information and sought an extension to respond to the request’s subparts. On November 9, 2021, Ms. Brelsford responded to the Complainant stating that the spreadsheet provided on October 29, 2021 contained all the requested information. In the SOI, the Custodian certified that she provided a fully responsive record, and was not obligated to

search for records containing the “reasons for separation.” Further, the Complainant failed to present any evidence that the Township possessed actual records containing said information at the time of the request.

Accordingly, the Custodian did not unlawfully deny access to the portion of the Complainant’s October 14, 2021 OPRA request seeking disclosable personnel information. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Township provided all responsive records containing the requested information. See Danis, GRC 2009-156, *et seq.*

### Agreements

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Here, in addition to the requested personnel information, the Complainant sought any “agreement” between the Township and any separated officer containing the “reason for separation.” On November 9, 2021, Ms. Brelsford responded to the Complainant stating that no separation agreements exist. In the SOI, the Custodian certified that the Township’s search for responsive records included any such agreements, but none were located. Additionally, the Complainant failed to present any evidence that the Township possessed same at the time of the request, or to refute the Custodian’s certification.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking any “agreement[s]” between the Township and separated police officers. Specifically, the Custodian certified, and the record reflects, that no such records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

### Prevailing Party Attorney’s Fees

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 the present,” as well as any “agreement” providing the “reason for separation.” In response, Ms. Brelsford provided a spreadsheet containing the requested personnel information, and stated that no separation agreements exist. The Complainant then filed the instant complaint on November 16, 2021, asserting the Custodian failed to provide the “real reason” for the officers’ separations. However, the Custodian certified in the SOI that the Township did not possess any additional records containing the requested personnel information, nor any agreements between the Township and separated officers. Thus, the Complainant has not achieved the desired result and is not a prevailing party in this complaint.

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. at 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. at 76. Specifically, the Custodian certified that she provided the Complainant with all responsive records in the Township’s possession and that no agreements between the Township and separated officers exist. 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. at 432, and Mason, 196 N.J. at 76.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the portion of the Complainant’s October 14, 2021 OPRA request seeking disclosable personnel information. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that Berkeley Township provided all responsive records containing the requested information. See Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
2. The Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking “agreement[s]” between Berkeley Township and separated officers. Specifically, the Custodian certified, and the record reflects, that no such records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
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, 432 (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, 76 (2008). Specifically, the Custodian certified that she provided



the Complainant with all responsive records in Berkeley Township's possession and that no agreements between the Township and separated officers exist. 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. at 432, and Mason, 196 N.J. at 76.

Prepared By: Samuel A. Rosado  
Staff Attorney

October 31, 2023