



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  
Commissioner

## FINAL DECISION

### February 18, 2025 Government Records Council Meeting

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

Complaint No. 2021-304

v.  
North Bergen Police Department (Hudson)  
Custodian of Record

At the February 18, 2025, public meeting, the Government Records Council (“Council”) considered the February 11, 2025, 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 complied with the Council’s November 8, 2023, Administrative Order because she responded in the prescribed time frame providing records for *in camera* review, and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian did not unlawfully deny access to the Complainant’s September 15, 2021 OPRA request seeking disclosable personnel information. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, the Township of North Bergen provided all responsive records. See N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
3. The Custodian lawfully redacted most redactions except the following: the third (3<sup>rd</sup>) redacted paragraph except for the last two redacted words; the fifth (5<sup>th</sup>) redacted paragraph except for the last two redacted words; and the sixth (6<sup>th</sup>) redacted paragraph except for the first redacted word. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. The Custodian shall therefore provide the Complainant with the requested agreement with the redactions revised as such.
4. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in conclusion no. 3 above within twenty (20) business days from receipt of this Order. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

5. 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 a responsive agreement between the Township of North Bergen and a separated officer. 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 18<sup>th</sup> Day of February 2025

John A. Alexy, Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: February 20, 2025**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***In Camera* Findings and Recommendations of the Executive Director  
February 18, 2025 Council Meeting**

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

**GRC Complaint No. 2021-304**

**v.**

**North Bergen Police Department (Hudson)<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.<sup>3</sup>

**Custodian of Record:** Erin Barillas

**Request Received by Custodian:** September 15, 2021

**Response Made by Custodian:** September 24, 2021; September 28, 2021; November 8, 2021

**GRC Complaint Received:** November 18, 2021

**Records Submitted for *In Camera* Examination:** Nine (9) redacted and unredacted copies of a settlement agreement between the Township of North Bergen (“Township”) and a former police officer.

**Background**

**Request and Response:**

On September 15, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 24, 2021,

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

<sup>2</sup> Represented by Kristin Bohn, Esq., of Chasan, Lamparello, Mallon & Capuzzo, P.C. (Secaucus, NJ).

<sup>3</sup> The Complainant sought other records that are not at issue in this complaint.

the Custodian responded to the Complainant in writing stating that an extension of time was needed to process the request. The Custodian also stated that a special service charge will be imposed to fulfill the request, seeking a \$500.00 deposit. The Custodian stated it would take an estimated 16 to 20 hours to process at a rate of \$25.00 per hour.

On September 26, 2021, the Complainant responded to the Custodian requesting she complete the Government Records Council's ("GRC's") 14-point analysis to determine how the Township arrived at the deposit amount. On September 28, 2021, the Custodian responded to the Complainant stating the Township was not obligated to provide the analysis, but nevertheless expanded the basis for the estimated charge, identifying the process to respond to one of the request items.

On October 13, 2021, the Complainant e-mailed the Custodian, requesting the estimated charge to respond to the request item at issue. On November 8, 2021, the Custodian responded to the request in writing, first stating no fee would be assessed. The Custodian next provided a spreadsheet containing the requested personnel information as well as two (2) separation agreements. The Custodian stated one (1) of the agreements contained redactions to protect confidential medical information pursuant to N.J.S.A. 47:1A-9(a) and Executive Order No. 26 (McGreevey 2002) ("EO 26").

#### 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 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 the redactions for one (1) of the agreements was excessive.

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 30, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on September 15, 2021. The Custodian certified that her search included contacting the North Bergen Police Department, the Department of Public Safety, the Township Legal Department, and the Human Resources Department. The Custodian certified that she responded in writing on November 8, 2021, providing the responsive records.

The Custodian argued 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 thus argued because the spreadsheet provided the reason for separation, she was not obligated to research the specific reasons why an employee separated from the Township.

The Custodian next maintained the redactions to the agreement were valid. The Custodian argued the agreement was minimally redacted to protect the employee's privacy interests relating to medical, psychiatric or psychological history, diagnosis, treatment, or evaluation in accordance with EO 26. The Custodian asserted the Complainant failed to provide a specific argument as to why the redactions were excessive and should be disregarded.

#### November 8, 2023 Council Meeting:

At its November 8, 2023 public meeting, the Council considered the October 31, 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 redacted settlement agreement to determine the validity of the Custodian's assertion that the record was lawfully redacted under OPRA's exemption for medical, psychiatric or psychological history, diagnosis, treatment, or evaluation, as well as exemptions pursuant to other State statutes or regulations. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-9(a); Executive Order No. 26 (McGreevey 2002); 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 deliver<sup>4</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted settlement, nine (9) copies of the redacted settlement, and a document or redaction index.<sup>5</sup>**

**This is an Administrative Order requiring compliance within ten (10) business days after receipt thereof. The Custodian shall also simultaneously deliver<sup>6</sup> certified confirmation of compliance with this Order, in accordance with N.J. Court Rules, R. 1:4-4,<sup>7</sup> to the Executive Director.**

#### Procedural History:

On November 9, 2023, the Council distributed its Administrative Order to all parties. On November 15, 2023, the Custodian responded to the Council's Administrative Order, providing nine (9) redacted and unredacted copies of the requested settlement agreement for *in camera* review. The Custodian also provided certified confirmation of compliance with the Executive Director.

The Custodian maintained that the redactions to the agreement was proper to protect the employee's privacy interests.

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<sup>4</sup> 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.

<sup>5</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>6</sup> 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.

<sup>7</sup> "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."

## Analysis

### Compliance

At its November 8, 2023 meeting, the Council ordered the Custodian to provide nine (9) redacted and unredacted copies of the requested agreement and to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On November 9, 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 November 27, 2023, accounting for Veteran's Day and Thanksgiving Day.

On November 17, 2023, the fifth (5<sup>th</sup>) day after receipt of the Council's Order, the Custodian responded in writing, providing nine (9) redacted and unredacted copies of the requested settlement agreement. The Custodian also provided certified confirmation of compliance, and a document index.

Therefore, the Custodian complied with the Council's November 8, 2023 Administrative Order because she responded in the prescribed time frame providing records for *in camera* review, and simultaneously provided certified confirmation of compliance to the Executive Director.

### 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. 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 on September 15, 2021, 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 November 8, 2021, the Custodian responded in writing providing a spreadsheet containing the requested personnel information. In the SOI, the Custodian certified that she provided all responsive records in the Township's possession containing the personnel

information. Further, the Complainant failed to present any evidence that the Township possessed additional records containing said information at the time of the request.

Accordingly, the Custodian did not unlawfully deny access to the Complainant's September 15, 2021 OPRA request seeking disclosable personnel information. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, the Township provided all responsive records. See N.J.S.A. 47:1A-10; Danis, GRC 2009-156, *et seq.*

### Agreements

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 . . . including . . . records relating to any grievance filed by or against an individual . . . 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, 594 (2011). These are:

[A]n individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received shall be government record;

[P]ersonnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

[D]ata contained in information which disclose conformity with specific experiential, educational or *medical* qualifications required for government employment or for receipt of a public pension, *but not including any detailed medical or psychological information*, shall be a government record.

[N.J.S.A. 47:1A-10 (emphasis added).]

Further, the personnel record exemption may apply to records that “bear many of the indicia of personnel files.” North Jersey Media Grp. v. Bergen Cnty. Prosecutor’s Office, 405 N.J. Super. 386, 390 (App. Div. 2009); Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014). In Rodriguez, GRC 2013-296, the Council held that “disciplinary actions are not specifically identified as personnel information subject to disclosure under OPRA.” Id. at 5. The Council has also similarly determined that records involving employee discipline or investigations into employee misconduct are properly classified as personnel records exempt from disclosure under N.J.S.A. 47:1A-10. See *e.g.* Merino, GRC 2003-110, Wares v. Twp. of West Milford (Passaic), GRC Complaint No. 2014-274 (May 2015).

OPRA further provides that:

The provisions of this act . . . shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA] . . . any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; *Executive Order of the Governor*; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a) (emphasis added).]

Executive Order No. 26 (McGreevy, 2002) (“EO 26”) excludes from the definition of a government record “[i]nformation relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation . . .” Id.

Additionally, during the pendency of this complaint, the New Jersey Supreme Court held that settlement agreements containing the reasons for an employee’s separation were subject to disclosure under OPRA. Libertarians for Transparent Gov’t v. Cumberland Cnty., 250 N.J. 46 (2022). The Court found that under OPRA, custodians were required to disclose the actual records containing the information required to be disclosed under N.J.S.A. 47:1A-10. Id. at 56. The Court thus held that because the requested settlement agreement contained N.J.S.A. 47:1A-10 information, the defendants were obligated to disclose the record with appropriate redactions. Id. at 57.

The GRC conducted an *in camera* examination on the submitted record. The results of this examination are set forth below.

The record under review pertained to an agreement between the Township and a former GTPD officer (“Officer”). The redactions are located on the first two (2) pages of the agreement. The redacted content largely pertains to assistance the Officer received following an on-duty incident in August 2017, and a notice of disciplinary action.

Initially, the GRC finds that all redactions on the first (1<sup>st</sup>) page of the agreement clearly fall within EO 26’s exemption. The content explicitly describes the Officer’s psychiatric diagnosis and treatment following the August 2017 incident. Additionally, the first two (2) redacted paragraphs on the agreement’s second (2<sup>nd</sup>) page also fall within EO 26’s exemption, as they restate the Officer’s diagnoses.

Regarding the fourth (4<sup>th</sup>) redacted paragraph, and the first redacted word on paragraph six (6) of the second (2<sup>nd</sup>) page, the redactions do not contain information protected under EO 26. However, they do pertain to disciplinary allegations against the Officer, which is protected under N.J.S.A. 47:1A-10. Therefore, those redactions were also appropriate pursuant to prevailing case law.

Thus, within the framework outlined in Libertarians, the aforementioned redactions adequately protected the Officer’s personnel and medical information afforded to her pursuant to N.J.S.A. 47:1A-10 and EO 26, while also limited in a way to provide the Complainant with the “reasons for separation.” The unredacted paragraphs demonstrate that the Township raised



disciplinary charges against the Officer but were dismissed in exchange for her resignation to apply for accidental disability retirement.

The third (3<sup>rd</sup>), fifth (5<sup>th</sup>), and sixth (6<sup>th</sup>) redacted paragraphs of the second (2<sup>nd</sup>) page present a novel issue before the GRC. These redactions reference the Officer having gone under random drug testing. In In re AG Law Enf't Directive Nos. 2020-5 and 2020-6, 465 N.J. Super. 111 (App. Div. 2020), aff'd, 246 N.J. 462 (2021), the Appellate Division addressed the issue of the Attorney General's annual disclosure of disciplinary actions against law enforcement officers committing major misconduct. The court held that for the purposes of OPRA, the disciplinary information released by the Attorney General constitutes "personnel information" as defined under OPRA. Id. at 143, fn. 3. Further, an example summation of an officer's misconduct description stated: "Sgt. David Cincotta was terminated for a failed Random Drug Test." N.J. Office of the Attorney General, Major Discipline Report (2021), pg. 20, <https://www.nj.gov/oag/iapp/docs/Major-Discipline-1-01-21-to-12-31-21.pdf>. Drawing from the above, the GRC finds that the statements revealing the Officer's drug testing are classified as personnel information under N.J.S.A. 47:1A-10, and not medical information under EO 26.

However, the agreement states that the Officer is "subject to random drug testing" as part of her employment, inferring that randomized drug testing is a "medical qualification" as a condition of employment with NBPd. See N.J.S.A. 47:1A-10. Therefore, the portions of the paragraphs identifying that a test occurred and the basic result apply to "medical qualifications" required to be disclosed under OPRA. The detail of the results, however, falls squarely within "detailed medical . . . information" not required to be disclosed. This treatment of the applicable redacted paragraphs strikes the appropriate balance of disclosing an employee's medical qualifications pursuant to N.J.S.A. 47:1A-10, while protecting detailed medical information.

Accordingly, the Custodian lawfully redacted most redactions except the following: the third (3<sup>rd</sup>) redacted paragraph except for the last two redacted words; the fifth (5<sup>th</sup>) redacted paragraph except for the last two redacted words; and the sixth (6<sup>th</sup>) redacted paragraph except for the first redacted word. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. The Custodian shall therefore provide the Complainant with the requested agreement with the redactions revised as such.

### **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 in part any agreements between separated police officers and the Township. In response, the Custodian provided two (2) agreements between the Township and two (2) officers with one agreement containing redactions. The Complainant thereafter filed the instant complaint on November 18, 2021, asserting the agreement was 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. After conducting an *in camera* review of the redacted and unredacted agreement, the GRC found that the Custodian unlawfully redacted a portion of the agreement, and therefore must provide the Complainant with the agreement with modified redactions. Thus, a causal nexus exists between this complaint and the change in the Custodian's conduct. See Mason, 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney fees.<sup>8</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 improperly redacted a responsive agreement between the Township and a separated officer. 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 complied with the Council's November 8, 2023 Administrative Order because she responded in the prescribed time frame providing records for *in camera*

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<sup>8</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).

review, and simultaneously provided certified confirmation of compliance to the Executive Director.

2. The Custodian did not unlawfully deny access to the Complainant's September 15, 2021 OPRA request seeking disclosable personnel information. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, the Township of North Bergen provided all responsive records. See N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
3. The Custodian lawfully redacted most redactions except the following: the third (3<sup>rd</sup>) redacted paragraph except for the last two redacted words; the fifth (5<sup>th</sup>) redacted paragraph except for the last two redacted words; and the sixth (6<sup>th</sup>) redacted paragraph except for the first redacted word. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10. The Custodian shall therefore provide the Complainant with the requested agreement with the redactions revised as such.
4. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in conclusion no. 3 above within twenty (20) business days from receipt of this Order. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**
5. 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 a responsive agreement between the Township of North Bergen and a separated officer. 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  
Senior Staff Attorney

January 21, 2025<sup>9</sup>

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<sup>9</sup> The matter was originally scheduled for the January 28, 2025 meeting but was tabled for further review.  
Rotimi Owoh, Esq. (on Behalf of African American Data & Research Institute) v. North Bergen Police Department (Hudson), 2021-304 – *In Camera* Findings and Recommendations of the Executive Director 10