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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

November 7, 2024 Government Records Council Meeting

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

Complaint No. 2021-330

v.
Palisades Police Department (Bergen)
Custodian of Record

At the November 7, 2024, public meeting, the Government Records Council (“Council”) considered the October 29, 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 Custodian’s December 14, 2021 response was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). Specifically, the Custodian failed to indicate whether any “agreements” exist between the Borough and separated police officers. However, the Council declines to order disclosure since the record demonstrates that responsive records were provided to the Complainant on August 14, 2024.
2. The Custodian did not unlawfully deny access to the portion of the Complainant’s June 23, 2021 OPRA request seeking disclosable personnel information. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Borough of Palisades Park 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).
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 current Custodian located responsive agreements after the instant complaint was filed upon conducting a search for same. 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 7th Day of November 2024

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: November 12, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 7, 2024 Council Meeting**

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

GRC Complaint No. 2021-330

v.

**Palisades Police Department (Bergen)²
Custodial Agency**

Records Relevant to Complaint:³ 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 2002 to 2017. N.J.S.A. 47:1A-10. This request includes any agreement entered with each one of the separated police officer(s).

- a. 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.
- b. Some police officers separate due to internal affairs investigations within the police departments.

Custodian of Record: Gina S. Kim⁴
Request Received by Custodian: June 23, 2021
Response Made by Custodian: December 14, 2021
GRC Complaint Received: December 16, 2021

Background⁵

Request and Response:

On June 23, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. Between June 23, 2021, and

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

² Represented by Scott J. Krumholz, Esq. of Ruderman & Roth, LLC (Springfield, NJ).

³ The Complainant sought additional records that are not at issue in this complaint.

⁴ The current Custodian of Record is Sophia Jang.

⁵ 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. Palisades Park Police Department (Bergen), 2021-330 – Findings and Recommendations of the Executive Director

December 14, 2021, the Custodian extended the time to respond to the Complainant's OPRA request.⁶ On December 14, 2021, the Custodian responded to the Complainant in writing, providing a table containing various personnel information.

Denial of Access Complaint:

On December 16, 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" is insufficient under N.J.S.A. 47:1A-10.

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

Statement of Information:

On December 28, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that the Borough of Palisades Park ("Borough") received the Complainant's OPRA request on June 23, 2021. The Custodian certified that the request was forwarded to the Police Department and thereafter the Finance Department to search for and locate records. The Custodian certified that she responded to the Complainant in writing on December 14, 2021, providing a table containing the responsive records.

The Custodian asserted that no portion of N.J.S.A. 47:1A-10 requires a custodian to provide a narrative explanation on the reasons why a public employee separated from an agency. The Custodian also asserted that the Appellate Division previously found a custodian was not required to "describe the circumstances surrounding a resignation or the reasons they decided to resign." Libertarians for Transparent Gov't v. Ocean Cnty. Prosecutor's Office, 2018 N.J. Super. Unpub. LEXIS 25, *11 (App. Div. 2018). The court noted 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, slip op. at *11-12.

The Custodian therefore argued she was not obligated to provide further explanation of the officers' separations from employment in accordance with Libertarians, slip op. The Custodian also cited Kieffer v. High Point Reg'l High Sch., 2010 N.J. Super. Unpub. LEXIS 3115 (App. Div. 2010), where the Appellate Division held that the agency was not required to disclose a coach's resignation letter as it was protected under N.J.S.A. 47:1A-10.

The Custodian next asserted the Borough had a duty to protect a citizen's personal information. N.J.S.A. 47:1A-1. The Custodian asserted that personnel matters are private matters, and OPRA's personnel exemption reflects that understanding by only permitting disclosure of limited, enumerated records.

⁶ Neither party provided correspondence evidencing these extensions; however, the Complainant does not raise timeliness as an issue in this complaint.

Rotimi Owoh, Esq. (on Behalf of African American Data & Research Institute) v. Palisades Park Police Department (Bergen), 2021-330 – Findings and Recommendations of the Executive Director

Accordingly, the Custodian asserted the Complainant received all responsive records to which he was entitled. The Custodian argued the prevailing case law demonstrates that she was not obligated to provide more “detailed reasons” why police officers separated from the Borough.

Additional Submissions

On January 13, 2022, the Complainant submitted a brief in response to the Complainant’s SOI. The Complainant asserted the Custodian failed to provide the “real reasons” for separation in response to his OPRA request.

The Complainant initially argued 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 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 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 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 a guilty plea agreement between an officer and prosecutor is akin to a settlement agreement normally entered into in civil proceedings, citing Libertarians for Transparent Gov’t v. Cumberland Cnty. Prosecutor’s Office, 465 N.J. Super. 11 (App. Div. 2020). The Complainant argued 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 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 argued that providing single word descriptions was only partially truthful and did not promote OPRA’s goal of transparency.

The Complainant requested the GRC compel the Custodian to comply fully and truthfully with the OPRA request. The Complainant also requested the GRC declare the Complainant a prevailing party and award counsel fees.⁷

⁷ 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

On May 21, 2024, the GRC requested additional information from the Custodian. Specifically, the GRC inquired whether the Custodian searched for and provided any “agreements” the Borough entered with any separated police officers. The GRC also stated that if no search was conducted, the Custodian must conduct a search for such agreements and certify whether any responsive records were located.

On May 24, 2024, the Custodian responded seeking an extension of time to respond to the GRC’s request. On May 29, 2024, the GRC granted the extension until June 3, 2024. The Custodian subsequently sought and received multiple additional extensions, with the final deadline of August 14, 2024.

On August 14, 2024, the current Custodian responded to the GRC, providing several records, including resolutions, settlement agreements, arrest reports, complaints, and summonses. However, the current Custodian failed to provide a certification as requested. Instead, the current Custodian provided a new response to the original OPRA request, stating that, for the request portion seeking agreements, “[t]o the extent that such any such documents exist, they are attached.”

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 here provided an insufficient response. The Custodian responded to the Complainant’s OPRA request via an e-mail containing a table listing personnel information of officers who have separated from the Borough. However, the e-mail failed to indicate whether any “agreement” existed between the Borough and the officers. In the SOI, the Custodian failed to certify whether a search for agreements was conducted at the time of the request. Further, the current Custodian also failed to certify that a search was conducted at the time of the request, and instead conducted a new search for any responsive agreements. Thus, the evidence of record demonstrates there was an insufficient response in the instant complaint.

Therefore, the Custodian’s December 14, 2021 response was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff, GRC 2007-272. Specifically, the Custodian failed to indicate whether any “agreements” exist between the Borough and separated police officers. However, the Council declines to order disclosure since the record demonstrates that responsive records were provided to the Complainant on August 14, 2024.

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. Palisades Park Police Department (Bergen), 2021-330 – Findings and Recommendations of 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 pursuant to N.J.S.A. 47:1A-6.

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 2002 to 2017” on June 23, 2021. On December 14, 2021, the Custodian responded in writing providing records containing the requested information. In the SOI, the Custodian certified that she provided fully responsive records and was not obligated to provide additional detail explaining the “reasons for separation.” Further, the Complainant failed to present any evidence that the Borough 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 June 23, 2021 OPRA request seeking disclosable personnel information. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, the Borough provided all responsive records containing the requested personnel information. See Danis, GRC 2009-156, *et seq.*

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 "[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 2002 to 2017." The Custodian initially responded providing a table containing the requested personnel information. The Complainant then filed the instant complaint on December 16, 2021, asserting the Custodian failed to provide the "real reason" for the officers' separations.

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 regarding the request item seeking agreements containing the reasons for a police officer's resignation. Additionally, the current Custodian located agreements upon conducting a search for same. Thus, a causal nexus exists between this complaint and the relief sought by the Complainant. Mason, 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney's fees.⁸

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 current Custodian located responsive agreements after the instant complaint was filed upon conducting a search for same. 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 December 14, 2021 response was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. of Educ.

⁸ 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. Palisades Park Police Department (Bergen), 2021-330 – Findings and Recommendations of the Executive Director

(Burlington), GRC Complaint No. 2007-272 (May 2008). Specifically, the Custodian failed to indicate whether any “agreements” exist between the Borough and separated police officers. However, the Council declines to order disclosure since the record demonstrates that responsive records were provided to the Complainant on August 14, 2024.

2. The Custodian did not unlawfully deny access to the portion of the Complainant’s June 23, 2021 OPRA request seeking disclosable personnel information. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Borough of Palisades Park 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).
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 current Custodian located responsive agreements after the instant complaint was filed upon conducting a search for same. 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

October 29, 2024