



## State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS  
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TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

TAHESHA L. WAY  
Lieutenant Governor

JACQUELYN A. SUÁREZ  
Acting Commissioner

### FINAL DECISION

#### January 30, 2024 Government Records Council Meeting

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

Complaint No. 2021-333

v.

Merchantville Police Department (Camden)  
Custodian of Record

At the January 30, 2024 public meeting, the Government Records Council (“Council”) considered the January 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 Custodian unlawfully denied access to the portion of the Complainant’s OPRA request seeking salary information for the separated officers. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013) (citing Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008)). Specifically, the Custodian’s failure to locate additional responsive records until after she conducted an additional search following receipt of the Denial of Access Complaint resulted in an insufficient search. However, the GRC declines to order disclosure because the Custodian disclosed same to the Complainant on December 27, 2021 simultaneously with the SOI.
2. The Custodian did not unlawfully deny access to the portion of the Complainant’s November 19, 2021 OPRA request seeking the names, date of hire, date of separation, reason for separation, and type of pension for separated officers of the Borough of Merchantville from 2014 to present. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Borough 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 Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking the “amount . . . of pension” and any “agreement[s]” between the Borough of Merchantville 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 v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).

4. The Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Custodian located additional responsive records after the instant complaint was filed. 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 30<sup>th</sup> Day of January 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: February 5, 2024**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 30, 2024 Council Meeting**

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

**GRC Complaint No. 2021-333**

v.

**Merchantville Police Department (Camden)<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:** Denise Brouse

**Request Received by Custodian:** November 19, 2021

**Response Made by Custodian:** November 19, 2021

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

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

**Request and Response:**

On November 19, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. That same day, the Custodian responded to the Complainant in writing via e-mail, providing a spreadsheet containing

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

<sup>2</sup> Represented by Timothy J. Higgins, Esq., of the Law Office of Timothy J. Higgins (Haddonfield, NJ).

<sup>3</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Rotimi Owoh, Esq. (on Behalf of African American Data & Research Institute) v. Merchantville Police Department (Camden), 2021-333 – Findings and Recommendations of the Executive Director

the requested personnel information. The Custodian also stated that no responsive records exist for subparts a, b, and c.

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,” was insufficient under N.J.S.A. 47:1A-10.

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

Statement of Information:

On December 27, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 19, 2021. The Custodian certified that her search included reviewing the Merchantville Police Department’s records, as well as inquiring Chief Richard Grassia. The Custodian certified that she responded to the Complainant in writing on November 19, 2021, attaching the responsive spreadsheet.

The Custodian argued that the Borough provided all responsive records in its possession. The Custodian also argued that the fact that the provided record did not contain the exact information sought was not a violation of N.J.S.A. 47:1A-10. Lastly, the Custodian asserted that any pension information for the separated officers would be subject to the Policeman’s & Fireman’s Retirement System (“PFRS”).

Supplemental Response:

On December 27, 2021, in addition to the SOI, the Custodian e-mailed the Complainant copies of two (2) collective bargaining agreements between the police union and the Borough. The agreements appear to contain additional salary information for officers.

Additional Submissions:

On November 13, 2023, the GRC sent a request for additional information to the Custodian. Specifically, the GRC inquired as to which responsive records were provided on November 19, 2021, and which were provided on December 27, 2021, the date of the SOI.

On November 20, 2023, the Custodian responded to the GRC’s request for additional information. The Custodian certified that at the time of the request she provided the Complainant with the spreadsheet containing the requested personnel information, and the collective bargaining agreements were provided on December 27, 2021.

## Analysis

### Sufficiency of Search

It is the custodian's responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian's response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant's OPRA request existed. The custodian certified that after receipt of the complainant's denial of access complaint, which contained e-mails responsive to the complainant's request, the custodian conducted a second search and found records responsive to the complainant's request. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Moreover, in Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013), the custodian initially responded to the complainant's request, producing four (4) responsive records and stating that no other records existed. However, after receiving the denial of access complaint, the custodian performed another search and discovered several other records. Id. In accordance with Schneble, the Council held that the custodian failed to perform an adequate initial search and unlawfully denied access to those additional records. Id.

In the instant matter, the Custodian asserted that at the time of the response, no additional responsive records were located pertaining to the requested salary information. After receiving the instant complaint, the Custodian thereafter provide two (2) collective bargaining agreements between the Borough and the local police union, containing additional salary information. The facts here are on point with those in Weiner, GRC 2013-52, and follows that an insufficient search occurred.

Accordingly, the Custodian unlawfully denied access to the portion of the Complainant's OPRA request seeking salary information for the separated officers. N.J.S.A. 47:1A-6; Weiner, GRC 2013-52 (citing Schneble, GRC 2007-220). Specifically, the Custodian's failure to locate responsive records until after she conducted an additional search following receipt of the Denial of Access Complaint resulted in an insufficient search. However, the GRC declines to order disclosure because the Custodian disclosed same to the Complainant on December 27, 2021 simultaneously with the SOI.

### 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.

Names, Date of Hire, Date of Separation, Reason for Separation, Salary, Type of Pension

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 November 19, 2021. That same day, the Custodian responded in writing providing a spreadsheet containing most of the requested personnel information and stated that no other responsive records exist. In the SOI, the Custodian certified that she provided responsive records which contained most of the requested information, but also separately provided collective bargaining agreements containing salary information on December 27, 2021. Further, the Complainant failed to present any evidence that the Borough possessed additional 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 November 19, 2021 OPRA request seeking the names, date of hire, date of separation, reason for separation, and type of pension for separated officers of the Borough from 2014 to present. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Borough provided all responsive records containing the requested information. See Danis, GRC 2009-156, *et seq.*

Amount of Pension, 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, the Complainant requested the “amount . . . of pension” as well as any “agreement” between the Borough and any separated officer containing the “reason for separation.” On November 19, 2021, the Custodian responded to the Complainant stating that no other records exist for subparts a, b, and c of the request, and that no responsive records exist for the outstanding personnel information. In the SOI, the Custodian certified and confirmed that no other records exist at the time of the request and that PFRS would possess the responsive pension information. Additionally, the Complainant failed to present any evidence that the Borough 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 the “amount . . . of pension” and any “agreement[s]” between the Borough 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. Klagholtz, 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.” The Custodian provided a spreadsheet which stated the “reason for separation” for the officers, along with the other Section 10 information, and stated no agreements existed. 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 asserted that no other responsive records exist pertaining to the personnel information. However, the Custodian subsequently located collective bargaining agreements containing additional salary information and provided same on December 27, 2021 simultaneously with the SOI. Thus, a causal nexus exists between this complaint and the change in the Custodian’s conduct. Mason, 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney’s fees.<sup>4</sup>

Therefore, the Complainant has achieved “the desired result because the complaint brought

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<sup>4</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).

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about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters, 387 N.J. Super. at 432. Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the Custodian located additional responsive records after the instant complaint was filed. 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 unlawfully denied access to the portion of the Complainant’s OPRA request seeking salary information for the separated officers. N.J.S.A. 47:1A-6; Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013) (citing Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008)). Specifically, the Custodian’s failure to locate additional responsive records until after she conducted an additional search following receipt of the Denial of Access Complaint resulted in an insufficient search. However, the GRC declines to order disclosure because the Custodian disclosed same to the Complainant on December 27, 2021 simultaneously with the SOI.
2. The Custodian did not unlawfully deny access to the portion of the Complainant’s November 19, 2021 OPRA request seeking the names, date of hire, date of separation, reason for separation, and type of pension for separated officers of the Borough of Merchantville from 2014 to present. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Borough 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 Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking the “amount . . . of pension” and any “agreement[s]” between the Borough of Merchantville 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 v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
4. The Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken,

196 N.J. 51, 76 (2008). Specifically, the Custodian located additional responsive records after the instant complaint was filed. 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

January 30, 2024