



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

March 25, 2025 Government Records Council Meeting

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

Complaint No. 2021-334

v.
Pine Beach Police Department (Ocean)
Custodian of Record

At the March 25, 2025 public meeting, the Government Records Council (“Council”) considered the March 18, 2025 Supplemental 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 January 28, 2025 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. 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 25th Day of March 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: March 27, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
March 25, 2025 Council Meeting**

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

GRC Complaint No. 2021-334

v.

**Pine Beach Police Department (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: Names, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension 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: Chief Keith Brown³

Request Received by Custodian: November 7, 2021

Response Made by Custodian: November 19, 2021

GRC Complaint Received: December 16, 2021

Background

January 28, 2025 Council Meeting:

At its January 28, 2025 public meeting, the Council considered the January 21, 2025 Supplemental 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, found that:

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

² No representation listed on record.

³ The current Records Custodian is Hannah Jacobus.

1. The Custodian did not fully comply with the Council's February 27, 2024 Interim Order. Specifically, although the Custodian responded in the prescribed time frame providing access to some of the records, he failed to address conclusion No. 2 as part of his response. Further, the Custodian failed to provide certified confirmation of compliance with the Executive Director.
2. Compliance for conclusion No. 2 of the Council's Order remains outstanding because the Custodian failed to address it in his response at all. Thus, the Custodian is being provided a final opportunity to respond to conclusion No. 2 by performing a search to locate and disclose any agreements between the Borough of Pine Beach and separated officers containing the "reasons for separation." If the Custodian believes the content of a particular record is exempt from disclosure, he must identify the specific lawful basis for any applicable redactions and disclose the remainder of the record. If the Custodian does not locate any responsive records, he must certify to this fact, inclusive of a detailed explanation of his search.
3. **The Custodian shall comply with conclusion No. 2 above within ten (10) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director.**
4. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On January 30, 2025, the Council distributed its Interim Order to all parties. On February 4, 2025, the current Custodian responded to the Council's Interim Order. The current Custodian certified that the Borough of Pine Beach ("Borough") searched for and located a notarized letter of resignation and an agreement between an officer and the Borough from 2021. The current Custodian certified that she provided those records as part of her response to the Council's Interim Order.

Analysis

Compliance

At its January 28, 2025 meeting, the Council ordered the Custodian to locate and produce any responsive agreements between the Borough and separated police officers which contain the reasons for separation. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On January 30, 2025, the Council distributed its Interim 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 February 13, 2025.

On February 4, 2025, the third (3rd) business day after receipt of the Council's Order, the current Custodian responded in writing, providing certified confirmation of compliance to the Executive Director. The current Custodian certified that she located and provided the Complainant two (2) agreements responsive to the OPRA request.

Therefore, the Custodian complied with the Council's January 28, 2025 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

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 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.” The Complainant also sought any “agreement[s]” between the Borough and separated police officers containing the “reasons for separation”. The Custodian responded by providing a spreadsheet containing a portion of 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. On February 27, 2024, the Council issued an Interim Order requiring the Custodian to conduct a search for the outstanding personnel information and for any responsive agreements between the Borough and separated officers. On April 4 and 5, 2024, the current Custodian provided the Complainant with a spreadsheet containing all the requested personnel information.

On January 28, 2025, the Council issued an additional Interim Order, stating the current Custodian failed to certify whether any responsive agreements were located. On February 4, 2025,

the current Custodian certified she located and provided responsive agreements to the Complainant in accordance with the Council's Order. 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 fees.⁴

Therefore, in accordance with the Council's January 28, 2024 and February 4, 2025 Interim Orders, 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 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 complied with the Council's January 28, 2025 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. 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**

⁴ 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).

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

March 18, 2025



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

INTERIM ORDER

January 28, 2025 Government Records Council Meeting

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

Complaint No. 2021-334

v.
Pine Beach Police Department (Ocean)
Custodian of Record

At the January 28, 2025, public meeting, the Government Records Council (“Council”) considered the January 21, 2025, Supplemental 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 fully comply with the Council’s February 27, 2024 Interim Order. Specifically, although the Custodian responded in the prescribed time frame providing access to some of the records, he failed to address conclusion No. 2 as part of his response. Further, the Custodian failed to provide certified confirmation of compliance with the Executive Director.
2. Compliance for conclusion No. 2 of the Council’s Order remains outstanding because the Custodian failed to address it in his response at all. Thus, the Custodian is being provided a final opportunity to respond to conclusion No. 2 by performing a search to locate and disclose any agreements between the Borough of Pine Beach and separated officers containing the “reasons for separation.” If the Custodian believes the content of a particular record is exempt from disclosure, he must identify the specific lawful basis for any applicable redactions and disclose the remainder of the record. If the Custodian does not locate any responsive records, he must certify to this fact, inclusive of a detailed explanation of his search.
3. **The Custodian shall comply with conclusion No. 2 above within ten (10) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director.**
4. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian’s compliance with the Council’s Interim Order.

Interim Order Rendered by the
Government Records Council
On The 28th Day of January 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: January 30, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
January 28, 2025 Council Meeting**

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

GRC Complaint No. 2021-334

v.

**Pine Beach Police Department (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: Names, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension 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: Chief Keith Brown
Request Received by Custodian: November 7, 2021
Response Made by Custodian: November 19, 2021
GRC Complaint Received: December 16, 2021

Background

February 27, 2024 Council Meeting:

At its February 27, 2024 public meeting, the Council considered the February 20, 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, found that:

1. The Custodian's failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a).

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

² No representation listed on record.

Moreover, the Custodian's failure to respond additionally obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . ." N.J.S.A. 47:1A-7(b).

2. The Custodian's November 19, 2021 response was insufficient because the Custodian failed to provide a specific legal basis for denying access to the requested records and failed to address each request item. N.J.S.A. 47:1A-5(g). See also DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). Therefore, the Custodian shall search for and certify whether such agreements exist.
3. The Custodian may have unlawfully denied access to the portion of the Complainant's OPRA request seeking "salary" and "payroll" information of police officers who separated from the Borough of Pine Beach since 2014. N.J.S.A. 47:1A-6; Kovalcik v. Somerset Cty. Prosecutor's Office, 206 N.J. 581 (2011); Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). The Custodian shall identify, locate, and produce the requested personnel information. N.J.S.A. 47:1A-10. If no responsive information could be located, the Custodian shall certify to same.
4. **The Custodian shall comply with conclusion Nos. 4 and 5 above within ten (10) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver³ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵**
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On February 29, 2024, the Council distributed its Interim Order to all parties. On March 12, 2024, the Custodian requested additional time to comply with the Council's Order. That same day, the GRC granted an extension until March 26, 2024. On March 25, 2024, the Custodian requested an additional fifteen (15) days to comply. On March 26, 2024, the GRC granted a final extension under April 10, 2024 to comply with the Council's Order.

³ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁵ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

On April 4, 2024, Hannah Jacobus responded on the Custodian's behalf providing a spreadsheet containing the responsive personnel information required to be disclosed under conclusion No. 3 of the Council's Order. That same day, the Complainant responded to the Ms. Jacobus, confirming receipt of the spreadsheet but noted that one of the officers was "terminated." The Complainant stated in accordance with Libertarians for Transparent Gov't v. Cumberland Cnty., 250 N.J. 46 (2022), AADARI requested a copy of the record containing the reasons why the officer was "terminated."

On April 5, 2024, Ms. Jacobus responded to the Complainant via e-mail providing another copy of the spreadsheet. However, the spreadsheet included a handwritten notation bracketing "terminated" and writing "resignation 4/20/15" next to the word. Ms. Jacobus also included a copy of a resignation letter from the officer referenced above, informing his resignation from Pine Beach Police Department. That same day, the Complainant responded to Ms. Jacobus, disputing the release of the resignation letter when the spreadsheet indicated the officer was "terminated." The Complainant requested clarification on whether the officer was "terminated" or "resigned."

On April 9, 2024, Ms. Jacobus responded to the Complainant stating the Borough of Pine Beach ("Borough") provided a sufficient response to the Complainant's request. That same day, the Complainant responded to Ms. Jacobus asking her to specifically clarify whether the officer "resigned" or was "terminated," and if it was the latter to provide the record containing the reasons for termination.

Analysis

Compliance

At its February 27, 2024 meeting, the Council ordered the Custodian to disclose the salary and payroll information of former police officers from 2014 to present or certify if such information could not be located. The Council also ordered the Custodian to locate and provide any "agreements" between the Borough and those separated officers containing the reasons for separation or certify if none were located. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On February 29, 2024, the Council distributed its Interim 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 March 14, 2024.

On March 12, 2024, the eighth (8th) business day after receipt of the Council's Order, the Custodian requested an extension of time to comply with the order. The GRC granted the extension until March 26, 2024. On March 25, 2024, the Custodian requested an additional extension of fifteen (15) days to respond. The GRC granted the extension with the final return date as April 10, 2024.

On April 4, 2024, Ms. Jacobus responded to the Council's Order via e-mail, attaching a spreadsheet containing the requested personnel information, noting that one of the officers was "terminated." The Complainant responded that same day requesting the record containing the reasons for that officer's termination. On April 5, 2024, Ms. Jacobus responded again, providing

a resignation letter from the terminated officer. Ms. Jacobus also provided another copy of the spreadsheet, but with a handwritten notation suggesting that the “terminated” officer in fact resigned. That same day, the Complainant responded to the Custodian, requesting clarification on whether that officer resigned or terminated.

On April 9, 2024, Ms. Jacobus responded to the Complainant stating the provided records adequately satisfied the Complainant’s OPRA request. The Complainant responded that same day again requesting clarification on whether the previously mentioned officer was terminated or resigned from the Borough.

Upon review of the evidence, the GRC is not satisfied that the Custodian fully complied with the Council’s Order. The Custodian disclosed a spreadsheet containing salary and payroll information of the separated officers as ordered under conclusion No. 3. However, the Custodian failed to address conclusion No. 2 in either the April 4, 2024 or April 5, 2024 responses. Lastly, the Custodian failed to provide certified confirmation of compliance to the Executive Director.

Therefore, the Custodian did not fully comply with the Council’s February 27, 2024 Interim Order. Specifically, although the Custodian responded in the prescribed time frame providing access to some of the records, he failed to address conclusion No. 2 as part of his response. Further, the Custodian failed to provide certified confirmation of compliance with the Executive Director.

In the past, the GRC has provided custodians a “final opportunity to disclose [records required to be disclosed] and/or provide comprehensive arguments as to why same are not subject to disclosure.” See Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-218, *et seq.* (Interim Order dated April 26, 2016) at 4. In Carter, the custodian submitted compliance in response to the Council’s September 29, 2015 Interim Order. However, in reviewing that compliance, it became evident that it was incomplete. Specifically, several attachments were not disclosed, and the custodian did not provide an explanation for the nondisclosure. The Council thus held that the custodian did not comply fully with its Order and provided him “a ‘final opportunity’ to comply. Carter, GRC 2014-218 (citing Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2013-287 (Interim Order dated April 28, 2015) at 7).

Here, compliance for conclusion No. 2 of the Council’s Order remains outstanding because the Custodian failed to address it in his response at all. Thus, the Custodian is being provided a final opportunity to respond to conclusion No. 2 by performing a search to locate and disclose any agreements between the Borough and separated officers containing the “reasons for separation.” If the Custodian believes the content of a particular record is exempt from disclosure, he must identify the specific lawful basis for any applicable redactions and disclose the remainder of the record. If the Custodian does not locate any responsive records, he must certify to this fact, inclusive of a detailed explanation of his search.

Prevailing Party Attorney’s Fees

The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian’s compliance with the Council’s Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not fully comply with the Council's February 27, 2024 Interim Order. Specifically, although the Custodian responded in the prescribed time frame providing access to some of the records, he failed to address conclusion No. 2 as part of his response. Further, the Custodian failed to provide certified confirmation of compliance with the Executive Director.
2. Compliance for conclusion No. 2 of the Council's Order remains outstanding because the Custodian failed to address it in his response at all. Thus, the Custodian is being provided a final opportunity to respond to conclusion No. 2 by performing a search to locate and disclose any agreements between the Borough of Pine Beach and separated officers containing the "reasons for separation." If the Custodian believes the content of a particular record is exempt from disclosure, he must identify the specific lawful basis for any applicable redactions and disclose the remainder of the record. If the Custodian does not locate any responsive records, he must certify to this fact, inclusive of a detailed explanation of his search.
3. **The Custodian shall comply with conclusion No. 2 above within ten (10) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver certified confirmation of compliance, in accordance with R. 1:4-4, to the Executive Director.**
4. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado
Senior Staff Attorney

January 21, 2025



PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

JACQUELYN A. SUÁREZ
Acting Commissioner

INTERIM ORDER

February 27, 2024 Government Records Council Meeting

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

Complaint No. 2021-334

v.

Pine Beach Police Department (Camden)
Custodian of Record

At the February 27, 2024 public meeting, the Government Records Council (“Council”) considered the February 20, 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 failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Custodian’s November 19, 2021 response was insufficient because the Custodian failed to provide a specific legal basis for denying access to the requested records and failed to address each request item. N.J.S.A. 47:1A-5(g). See also DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). Therefore, the Custodian shall search for and certify whether such agreements exist.
3. The Custodian may have unlawfully denied access to the portion of the Complainant’s OPRA request seeking “salary” and “payroll” information of police officers who separated from the Borough of Pine Beach since 2014. N.J.S.A. 47:1A-6; Kovalcik v. Somerset Cty. Prosecutor’s Office, 206 N.J. 581 (2011); Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). The Custodian shall identify, locate, and produce the requested personnel information. N.J.S.A. 47:1A-10. If no responsive information could be located, the Custodian shall certify to same.
4. **The Custodian shall comply with conclusion Nos. 4 and 5 above within ten (10) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for**

each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³

5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 27th Day of February 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 29, 2024

¹ 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.

² "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."

³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 27, 2024 Council Meeting**

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

GRC Complaint No. 2021-334

v.

**Pine Beach Police Department (Camden)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: Names, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension 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: Chief Keith Brown
Request Received by Custodian: November 7, 2021
Response Made by Custodian: November 19, 2021
GRC Complaint Received: December 16, 2021

Background³

Request and Response:

On November 7, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 19, 2021, the Custodian responded in writing, providing a spreadsheet containing a list of former officers, which included their names, date of hire, date of separation, and reason for separation.

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

² No representation listed on record.

³ 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. Pine Beach Police Department (Ocean), 2021-334 – Findings and Recommendations of the Executive Director

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 also asserted that the Complainant failed to provide the salary information of the separated officers.

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 21, 2021, the GRC requested a completed Statement of Information (“SOI”) from the Custodian. On January 25, 2022, the GRC sent a “No Defense” letter to the Custodian, requesting a completed SOI within three (3) business days of receipt. The GRC noted that the Custodian’s failure to submit an SOI could lead to an adjudication based solely on the Complainant’s submission. N.J.A.C. 5:105-2.4(f). The GRC did not receive any correspondence from the Custodian.

Analysis

Failure to Submit SOI

OPRA also provides that “Custodians shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]” N.J.A.C. 5:105-2.4(a).

OPRA further provides that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

[N.J.A.C. 5:105-2.4(f).]

Finally, OPRA provides that “[a] custodian’s failure to submit a completed and signed SOI . . . may result in the Council’s issuing a decision in favor of the complainant.” N.J.A.C. 5:105-2.4(g). In Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus, the Council noted the custodian’s failure to adhere to N.J.A.C. 5:105-2.4(a). See also Kovacs v. Irvington Police Dep’t (Essex), GRC Complaint No. 2014-196 (January 2015); Howell v. Twp. of Greenwich (Warren), GRC Complaint No. 2015-249 (November 2016).

In the instant matter, the Custodian did not comply with the GRC's initial request for an SOI. On January 25, 2022, well after the expiration of the five (5) business day deadline, the GRC transmitted a "No Defense" letter to the Custodian providing him an additional three (3) business days to submit the requested SOI. The transmission also included a copy of the original SOI letter providing detailed instructions on how to properly submit an SOI. The GRC never received a completed SOI or any communication from the Custodian.

Accordingly, the Custodian's failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian's failure to respond additionally obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . ." N.J.S.A. 47:1A-7(b).

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). A custodian's failure to do so results in an insufficient response and a violation of OPRA. The Council has held that for a denial of access to be in compliance with OPRA, it must be specific and sufficient to prove that a custodian's denial is authorized by OPRA. See DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009); Morris v. Trenton Police Dep't (Mercer), GRC Complaint No. 2007-160 (May 2008). Further, 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 provided an insufficient response. Here, the Custodian responded to the Complainant's OPRA request by providing a spreadsheet containing personnel information for separated officers. However, the e-mail failed to identify whether the Custodian was denying access to personnel information not provided and further failed to address each request item. Namely, the Custodian did not indicate whether responsive records exist containing the officers' salary information. Furthermore, the Custodian failed to indicate whether any agreements existed between the Borough of Pine Beach ("Borough") and any separated officer. The facts here are on point with those in DeAppolonio and Paff; thus, it follows there was an insufficient response in the instant complaint.

Therefore, the Custodian's November 19, 2021 response was insufficient because the Custodian failed to provide a specific legal basis for denying access to certain personnel information. Furthermore, the Custodian failed to address whether any agreements exist between the Borough and separated officers. N.J.S.A. 47:1A-5(g). See also DeAppolonio, GRC 2008-62 and Paff, GRC 2007-272. Therefore, the Custodian shall search for and certify whether such agreements exist.

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.

Further, OPRA provides that “[n]otwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency . . . shall not be considered a government record . . .” N.J.S.A. 47:1A-10. OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cty. Prosecutor's Office, 206 N.J. 581 (2011). These include “an individual’s name, title, position, *salary* [and] *payroll record*.” Id. (emphasis added). See also Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004) (defining a “payroll record” for purposes of OPRA as records relating to payment of a public employee). Further, the Council has previously required that responding to an OPRA request for personnel information requires that a custodian provide the most comprehensive records containing the responsive information. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Richardson v. N.J. Office of the Attorney General, GRC Complaint No. 2014-277 (Interim Order dated May 26, 2015).

In the instant matter, the Complainant requested in part the “[n]ames, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension” of police officers who separated from the Borough since 2014. In his response, the Custodian provided a portion of the requested personnel information, but did not state whether records exist containing the requested salary and payroll information. Furthermore, because the Custodian did not provide an SOI, it remains unclear whether such records exist.

Therefore, the Custodian may have unlawfully denied access to the portion of the Complainant’s OPRA request seeking “salary” and “payroll” information of police officers who separated from the Borough since 2014. N.J.S.A. 47:1A-6; Kovalcik, 206 N.J. 581; Jackson, GRC 2002-98. The Custodian shall identify, locate, and produce the requested personnel information. N.J.S.A. 47:1A-10. If no responsive information could be located, the Custodian shall certify to same.

Prevailing Party Attorney’s Fees

The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian’s compliance with the Council’s Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian's failure to respond additionally obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . ." N.J.S.A. 47:1A-7(b).
2. The Custodian's November 19, 2021 response was insufficient because the Custodian failed to provide a specific legal basis for denying access to the requested records and failed to address each request item. N.J.S.A. 47:1A-5(g). See also DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). Therefore, the Custodian shall search for and certify whether such agreements exist.
3. The Custodian may have unlawfully denied access to the portion of the Complainant's OPRA request seeking "salary" and "payroll" information of police officers who separated from the Borough of Pine Beach since 2014. N.J.S.A. 47:1A-6; Kovalcik v. Somerset Cty. Prosecutor's Office, 206 N.J. 581 (2011); Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). The Custodian shall identify, locate, and produce the requested personnel information. N.J.S.A. 47:1A-10. If no responsive information could be located, the Custodian shall certify to same.
4. **The Custodian shall comply with conclusion Nos. 4 and 5 above within ten (10) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.⁶**
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

February 20, 2024

⁴ 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.

⁵ "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."

⁶ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Rotimi Owoh, Esq. (on behalf of African American Data & Research Institute) v. Pine Beach Police Department (Ocean), 2021-334 – Findings and Recommendations of the Executive Director