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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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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. 2021-351

v.
Califon Borough Police Department (Hunterdon)
Custodian of Record

At the March 25, 2025 public meeting, the Government Records Council (“Council”) considered the March 18, 2025 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian has borne her burden of proof that the proposed special service charge of \$180.00 comprised of eight (6) hours at an hourly rate of \$30.00 to locate and review six (6) personnel files maintained by Washington Township, and assemble, copy, and redact those files is warranted and reasonable here. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002); Rivera v. Rutgers, The State Univ. of New Jersey, GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
2. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian’s conduct. Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the proposed special service charge imposed by the original Custodian was warranted and reasonable. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51.

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**

**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. 2021-351

v.

**Califon Borough Police Department (Hunterdon)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 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: Caitlin Haughey³

Request Received by Custodian: November 7, 2021

Response Made by Custodian: November 8, 2021; November 12, 2021

GRC Complaint Received: December 20, 2021

Background⁴

Request and Response:

On November 7, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the original Custodian seeking the above-mentioned records. On November 8, 2021, the original Custodian responded to the Complainant in writing, stating that fulfilling the request

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

² Represented by Mark S. Anderson, Esq., of Woolson, Anderson and Peach, PC (Somerville, NJ).

³ The Custodian of Record at the time of the request was Laura Eidsvaag.

⁴ 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. Califon Borough Police Department (Hunterdon), 2021-351 – Findings and Recommendations of the Executive Director

required six (6) hours to review the files of the six (6) officers who have separated from Califon Borough (“Borough”) and provide the requested information. The original Custodian further stated that \$30.00 per hour for a total of \$180.00 was a reasonable amount and asked the Complainant to state whether he was willing to pay the cost.

On November 10, 2021, the Complainant responded to the original Custodian stating the estimated charge was excessive and that it should not take six (6) hours to provide the reasons for separations of six (6) officers. The Complainant asked the original Custodian to reconsider the charge.

On November 12, 2021, the original Custodian replied to the Complainant stating that the request required locating, assembling, and reviewing the entire personnel files for six (6) retired officers for fulfillment. The original Custodian further stated that once relevant documents are located, they would need to be reviewed so that non-public information can be redacted. The original Custodian also stated that the \$180.00 charge was an estimate, and the actual cost could be higher or lower. The original Custodian also stated that as an alternative the Complainant could come to the Borough to inspect and copy the records himself, but that may also incur a special service charge.

Denial of Access Complaint:

On December 20, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant initially objected to the proposed special service charge as excessive. The Complainant next asserted that the original Custodian did not provide the records showing the reasons for separation.

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

Statement of Information:

On March 21, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the Borough received the Complainant’s OPRA request on November 8, 2021. The Custodian certified that the Borough does not have a police force, but instead has a shared services agreement with Washington Township (“Township”). The Custodian certified that while the Borough does not maintain the personnel records of the Township’s police officers, she obtained a description of records held by same. The Custodian certified that the original Custodian responded to the Complainant in writing on November 8, 2021, providing a special service charge estimate.

The Custodian asserted that while the Borough was not the custodian of the requested records, they were willing to obtain them from the Township if the Complainant paid an appropriate special service charge. The Custodian asserted that the Complainant did not respond to the original Custodian’s November 12, 2021 e-mail before filing the instant complaint.

Additional Submissions

On May 20, 2024, the GRC requested the Custodian complete a 14-point questionnaire pertaining to its special service charge imposition. On May 28, 2024, the Custodian responded to the GRC providing the following answers:

1. What records are requested?

Response: Personnel information of police officers who have separated from the Borough from 2014 to the present. However, the Borough does not have any present or former police officers, as the Township provides police services through a shared services agreement. At the time of the request, it was believed that there were (6) former Township officers to whom the request may apply.

2. Give a general nature description and number of the government records requested.

Response: The number of records cannot be determined until an investigation and examination to the Township records is completed. The requested records relate to employees of the Township, not the Borough, and are not maintained by the Borough. This is why the Borough requested a deposit for a special service charge, not a specific charge, and presumably why the Complainant stated that he was “willing to pay a reasonable fee” and acknowledged that redaction of confidential information would be required. At the time of the request, the Borough believed that there were (6) former Township officers to whom the request may apply.

3. What is the period of time over which the records extend?

Response: According to the request, “2014 to the present.”

4. Are some or all of the records sought archived or in storage?

Response: The records requested are not those of the Borough. It is believed that all of the requested records are maintained by the Township in storage.

5. What is the size of the agency (total number of employees)?

Response: The Borough has a total of five (5) employees, (4) are part-time employees and (1), the Borough Clerk, is a full-time employee.

6. What is the number of employees available to accommodate the records request?

Response: One (1), the Borough Clerk, who is the only current employee with appropriate knowledge of personnel records and required redaction. The Borough Clerk was employed as Deputy Clerk at the time of the request and the complaint.

7. To what extent do the requested records have to be redacted?

Response: Without seeing the records, which are not maintained by the Borough, the question cannot be fully answered. At a minimum, personal identifying information, such as Social Security numbers, unlisted telephone numbers, (see N.J.S.A. 47:1A-5), and health information is expected to be in personnel records and is required to be redacted. The request additional authorizes redaction of “confidential information.”

8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve, and assemble the records for copying?

Response: For the reasons previously mentioned, the number of hours required to locate, retrieve, and assemble the requested records cannot be determined in advance, which is why the Borough requested a deposit for a special service charge, not a flat specific charge. The Borough’s estimate was based on information from the Township’s Police Department, and was one (1) hour per personnel record, for a total of six (6) hours, which was applied to an hourly rate of \$30.00. At the present time, the only Borough employee qualified to properly handle the required process is the Borough Clerk.

9. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?

Response: For the reasons previously mentioned, the Borough Clerk is the only current Borough employee qualified to properly investigate and examine the requested records. The Borough Clerk would not need to be monitored in the investigation and examination of records.

10. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to return records to their original storage place?

Response: For the reasons previously mentioned, the number of hours required to return the requested records to storage cannot be determined in advance, which is why the Borough requested a deposit for a special service charge, not a flat specific charge upfront. The only current Borough employee qualified to handle personnel records is the Borough Clerk, who receives an annual salary of \$56,100.00.

11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?

Response: The Borough Clerk is the only current employee who is qualified to handle personnel records and required redaction.

12. Who (name and job title) in the agency will perform the work associated with the records request and that person’s hourly rate?

Response: The Borough Clerk, Karen Mastro, R.M.C., who is not an hourly employee but is paid an annual salary of \$56,100.00.

13. What is the availability of information technology and copying capabilities?

Response: The Borough does not maintain “information technology” as such. The Borough does not have an IT department or employee, relying on outside contractors as needed. The Borough does have ordinary photocopying equipment, which it could use if the records were transferred from the Township to the Borough. The Borough believes that if the records were investigated and examined at the Township, the Township would make available photocopying equipment for the purpose.

14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce, and return the requested documents.

Response: For the reasons previously mentioned, the number of hours required for the entire process of preparing for an inspection of the relevant documents, conducting an inspection, identifying the relevant documents, redacting and copying the requested records, and returning the documents to storage cannot be determined in advance, which is why the Borough requested a deposit for a special service charge, not a specific charge.

Analysis

Special Service Charge

Whenever a records custodian asserts that fulfilling an OPRA records request requires an “extraordinary” expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides that:

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an *extraordinary expenditure of time and effort to accommodate the request*, the public agency may charge, in addition to the actual cost of duplicating the record, a *special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies . . .*

[Id. (emphasis added).]

The determination of what constitutes an “extraordinary expenditure of time and effort” under OPRA must be made on a case-by-case basis and requires an analysis of a variety of factors. These factors were discussed in Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super.

191, 199 (Law Div. 2002). There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the “extraordinary burden” placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

The court determined that in the context of OPRA, the term “extraordinary” will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. Id. at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” Id.

In Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012), the complainant sought in part motor vehicle recording (“MVR”) footage from the Rutgers University Police Department (“RUPD”). The custodian certified that there was one (1) out of the seventy-five (75) employees qualified to fulfill the complainant’s OPRA request. The employee certified that he expended approximately twelve (12) hours fulfilling the entire request, but RUPD charged only for the two (2) hours spent locating and copying the requested MVR footage on his work computer. The employee also certified that while creating a copy of the footage, he was unable to perform any other work on his computer. The Council held that the disruption to the employee’s regular duties, as well as the fact that RUPD did not charge the entire time expended to fulfill the request, warranted the special service charge.

In the instant matter, the Complainant disputed the assessed special service charge of \$180.00. The Complainant asserted that the charge was unwarranted. Conversely, the Custodian argued that the charge was warranted because only a portion of the records were available electronically. The Custodian also argued that a manual review of the files for potential redactions were required to fulfill the request, and she was the only employee capable of performing the review. The Custodian’s 14-point analysis reveals that the Borough employed five (5) people total, and the Custodian was the only full-time employee.

A review of the forgoing supports that the Borough’s estimated expenditure of six (6) hours represents an extraordinary time and effort to produce responsive records given the size of the agency and the location and medium of the documents containing potentially responsive information. See Rivera, GRC 2009-311. In particular, the Custodian’s 14-point analysis

highlights the physical records' location at another municipality, wherein the Custodian would not have familiarity with how the municipality stores its personnel files. The Custodian also noted that she is one of five (5) total employees with the Borough, which is a fraction of the RUPD in Rivera, GRC 2009-311. Requiring the Custodian to leave her position for an estimated six (6) hours comprises an "extraordinary" expenditure of time and effort given the total size of the Borough. See Courier Post, 360 N.J. Super. at 202. Additionally, the Custodian demonstrates that she is the lowest paid employee capable of performing the work, given her role as the only full-time employee as well as her familiarity with personnel records and the request at issue.

Accordingly, the Custodian has borne her burden of proof that the proposed special service charge of \$180.00 comprised of eight (6) hours at an hourly rate of \$30.00 to locate and review six (6) personnel files maintained by the Township, and assemble, copy, and redact those files is warranted and reasonable here. N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. at 202; Rivera, GRC 2009-311. Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

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 “[n]ames, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension of individuals who either resigned or retired or terminated or otherwise separated from 2014 to the present,” as well as any “agreement” providing the “reason for separation.” In response, the original Custodian imposed a special service charge to locate and provide the records. The Complainant then filed the instant complaint on December 20, 2021, asserting the estimated special service charge was excessive. However, the charge was determined to be warranted and reasonable. Therefore, the complaint did not bring about a change in the Custodian's conduct, and the Complainant is not a prevailing party.

Therefore, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters, 387 N.J. Super. at 432. Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the proposed special service charge imposed by the original Custodian was warranted and reasonable. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that the proposed special service charge of \$180.00 comprised of eight (6) hours at an hourly rate of \$30.00 to locate and review six (6) personnel files maintained by Washington Township, and assemble, copy, and redact those files is warranted and reasonable here. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002); Rivera v. Rutgers, The State Univ. of New Jersey, GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
2. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008). Specifically, the proposed special service charge imposed by the original Custodian was warranted and reasonable. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51.

Prepared By: Samuel A. Rosado
Senior Staff Attorney

March 18, 2025