



State of New Jersey

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PHILIP D. MURPHY
Governor

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Lieutenant Governor

JACQUELYN A. SUÁREZ
Acting Commissioner

FINAL DECISION

April 30, 2024 Government Records Council Meeting

Rotimi Owoh, Esq. (o/b/o Grace Woko)
Complainant

Complaint No. 2021-71

v.

Mount Holly Township Police Department (Burlington)
Custodian of Record

At the April 30, 2024 public meeting, the Government Records Council (“Council”) considered the April 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 did not unlawfully deny access to the Complainant’s OPRA request seeking the “[n]ames, date of hire, date of separation and reason for separation and salary of individuals who either resigned or were terminated in the last 5 years from your police department.” N.J.S.A. 47:1A-6. The Custodian provided the Complainant with the “reason for separation” in accordance with N.J.S.A. 47:1A-10 and Libertarians for Transparent Gov’t v. Cumberland Cnty., 250 N.J. 46 (2022), and was not obligated to provide records that were not requested by the Complainant. See also Owoh ex rel. Afr. Am. Data & Rsch. Inst. v. Maple Shade Police Dep’t Burlington, 2024 N.J. Super. Unpub. LEXIS 445 (App. Div. 2024).
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 Complainants’ 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 Custodian properly responded to the Complainant’s request for personnel information required to be disclosed under N.J.S.A. 47:1A-10. 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 71.

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 30th Day of April 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: May 2, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Rotimi Owoh, Esq. (on Behalf of Grace Woko)¹
Complainant**

GRC Complaint No. 2021-71

v.

**Mount Holly Township Police Department (Burlington)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of the “[n]ames, date of hire, date of separation and reason for separation and salary of individuals who either resigned or were terminated in the last 5 years from your police department.”³

Custodian of Record: Captain Richard Pietrow

Request Received by Custodian: December 9, 2020

Response Made by Custodian: December 29, 2020; January 4, 2021; January 6, 2021

GRC Complaint Received: March 23, 2021

Background⁴

Request and Response:

On December 9, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On December 29, 2020, the Custodian responded in writing stating that no responsive records exist. That same day, the Complainant replied to the Custodian requesting confirmation that no officer resigned or was terminated from the Mount Holly Police Department (“MHPD”) in the last five (5) years.

On January 4, 2021, the Custodian responded to the Complainant seeking clarification on the request. The Custodian stated that it was his belief that the Complainant sought resignations related to use of force complaints, and inquired if the Complainant in fact sought any full-time resignations from the last five (5) years. That same day, the Complainant responded stating that he sought all resignations in that period.

On January 6, 2021, the Custodian responded to the Complainant in writing providing a

¹ The Complainant represents Grace Woko.

² Represented by Douglas L. Heinold, Esq., of Raymond, Coleman, Heinold, LLP (Moorestown, NJ).

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

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.

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spreadsheet containing the requested personnel information. The Custodian further stated that a termination was overlooked during the initial search, adding that while the paperwork was dated for 2015, the actual termination occurred in 2016. On February 20, 2021, the Complainant replied to the Custodian stating that the spreadsheet only stated “resign” or “terminated” and did not state the reasons. The Complainant inquired if the Custodian would reconsider the response and provide the reasons for separation. On February 22, 2021, the Custodian responded to the Complainant stating that the request has been answered.

Denial of Access Complaint:

On March 31, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to provide the “real reasons” for separation in response to his OPRA request.

The Complainant asserted that in many instances where a police officer is charged for crimes, they may enter a plea agreement which may require them to leave the police department or be removed from employment because of a conviction. The Complainant argued that it was insufficient for the Custodian to merely state the terms “retired”, “resigned”, or “terminated” as the reason for separation if the “real reason” was that the officer was compelled to separate as part of a plea agreement or sentence. The Complainant thus argued that the Custodian violated OPRA by not providing the “real reasons” for any of the separations listed in the spreadsheet.

The Complainant asserted that a guilty plea agreement between an officer and prosecutor is akin to a settlement agreement normally entered into in civil proceedings. Libertarians for Transparent Gov’t v. Cumberland Cnty., 465 N.J. Super. 11 (App. Div. 2020), rev’d, 250 N.J. 46 (2022). The Complainant argued that civil settlement agreements are subject to OPRA, and therefore guilty plea agreements should also be subject to OPRA in accordance with Libertarians.

The Complainant contended that MHPD did not want to provide the “real reasons” for separation due to the pervasive culture and predisposition to protect officers convicted of misconduct. The Complainant argued that providing single word descriptions was only partially truthful and did not promote OPRA’s goal of transparency.

The Complainant asserted that as an example of police departments’ culture, he noted that in response to a similar OPRA request, Millville Police Department stated that two (2) officers “resigned” from the department. The Complainant asserted that in fact the two (2) officers pleaded guilty to criminal charges and as part of the agreement and sentencing they were required to be separated from the department.

The Complainant requested that the GRC compel the Custodian comply fully and truthfully with the OPRA request. The Complainant also requested that the GRC declare the Complainant a prevailing party and award Counsel fees.⁵

⁵ The Complainant further noted that access to the records should have been granted under the “common law ‘right to access public records’.” However, the GRC does not have the authority to address a requestor’s common law right to access records. N.J.S.A. 47:1A-7(b); Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-Rotimi Owoh, Esq. (on Behalf of Grace Woko) v. Mount Holly Township Police Department (Burlington), 2021-71 – Findings and Recommendations of the Executive Director

Statement of Information:

On April 23, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on December 9, 2020. The Custodian certified that he initially responded to the Complainant in writing on December 29, 2020. The Custodian certified that upon receiving clarification he responded on January 6, 2021, providing the requested information via a spreadsheet maintained by Mount Holly Township (“Township”).

The Custodian argued that he appropriately responded to the Complainant’s OPRA request, providing the personnel information he was entitled to under N.J.S.A. 47:1A-10. The Custodian argued that the Complainant now asserted that the request required the Township to review its records to determine if those separations were compelled by a plea bargain or criminal sentence. The Custodian argued that he was not required to conduct research on behalf of the requestor. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

The Custodian also argued that to the extent the Complainant wanted resignation letters, the Custodian noted that in Kieffer v. High Point Reg’l High Sch., 2010 N.J. Super. Unpub. LEXIS 3115 (App. Div. Dec. 28, 2010), the court held that the school was not obligated to provide a coach’s resignation letter under OPRA. The Custodian asserted there were no other documents that could be supplied to provide additional information about the “reasons” for separation. The Custodian further noted that he was not required to research her records to determine whether responsive information exists. See Giambri v. Sterling High Sch. Dist. (Camden), GRC Complaint No. 2014-397 (July 2015).

Analysis

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.

Regarding personnel records, OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011). These exceptions include “an individual’s name, title, position, salary, payroll record, length of service, *date of separation and the reason therefore*, and the amount and type of any pension received shall be government record.” N.J.S.A. 47:1A-10 (“Section 10”) (emphasis added).

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010), the Council determined that “name, title, position, salary, payroll

347 (January 2013); Kelly v. N.J. Dep’t of Transp., GRC Complaint No. 2010-215 (November 2011). Thus, the GRC cannot address any common law right of access to the requested records.

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record and length of service” is information which is specifically considered to be a “government record” under Section 10, and that “payroll records” must be disclosed pursuant to Jackson, GRC 2002-98. The Council thus held that the complainant’s March 25, 2009, request for “[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009” was a valid request pursuant to OPRA. Id. at 5. Additionally, prior GRC case law supports the disclosure of database information regarding personnel actions. See Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). Further, the Council has previously required that responding to an OPRA request for personnel information requires 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).

During the pendency of this complaint, the New Jersey Supreme Court issued its opinion in Libertarians, 250 N.J. 46, that the GRC finds relevant and instructive. In that case, the plaintiffs discovered through meeting minutes that a corrections officer was involved in a misconduct investigation along with several other officers. Id. at 49-50. The officer was originally going to be terminated but was allowed to “retire in good standing” after cooperating with the investigation, in accordance with a settlement agreement. Id. The plaintiffs then submitted an OPRA request seeking the settlement agreement referenced in the minutes, and the officer’s “name, title, position, salary, length of service, date of separation and the reason therefore” in accordance with Section 10. Id. The defendants declined to provide the settlement agreement, claiming it was a personnel record exempt from access. Id. As to the requested personnel information, the defendants stated via e-mail:

Officer Ellis was charged with a disciplinary infraction and was terminated. His title was as a Corrections Officer. His yearly salary was \$ 71,575. His date of hire was March 6, 1991. His date of separation was February 28, 2017. As indicated above, the reason for the separation was a disciplinary infraction.

[Id.]

The plaintiffs challenged the denial of access to the settlement agreement, asserting that the defendants “misrepresent[ed] the ‘reason’ for Ellis’s separation from public employment” and improperly withheld a government record. Id. The trial court ordered disclosure of the settlement agreement with redactions, and the Appellate Division reversed, finding that the record was exempt as a personnel record under Section 10.

The Court reversed the Appellate Division and ordered disclosure of the settlement agreement with redactions. The Court found that under OPRA, custodians were required to disclose the actual records containing the information required to be disclosed under Section 10. Id. at 56. The Court thus held that because the requested settlement agreement contained Section 10 information, the defendants were obligated to disclose the record with appropriate redactions. Id. at 57.

Additionally, during the pendency of this matter the GRC issued its decision in Owoh, Esq. (O.B.O. AADARI & Grace Woko) v. Maple Shade Police Dep’t (Burlington), GRC Complaint

No. 2021-64 (July 2022). There, the complainant submitted a request to the custodian identical to the request at issue. In response, the custodian provided a spreadsheet containing the requested personnel information, including a column indicating the “reason for separation” as either “resigned”, or “terminated”. The complainant filed a complaint asserting the custodian failed to provide records which further elaborate on the reasons for separation. In distinguishing from Libertarians, 250 N.J. 46, the Council found that the custodian failed to expressly seek settlement agreements containing the “reasons for separation.” The Council therefore held that the custodian did not unlawfully deny access.

The complainant thereafter filed an appeal of Maple Shade, GRC 2021-64. On March 18, 2024, the Appellate Division issued its decision in Owoh ex rel. Afr. Am. Data & Rsch. Inst. v. Maple Shade Police Dep’t Burlington, 2024 N.J. Super. Unpub. LEXIS 445 (App. Div. 2024). In affirming the Council, the Appellate Division found that the complainant’s request did not seek specific documents, but only general information subject to disclosure under Section 10. Owoh, slip op. at *12. The court found that the custodian’s spreadsheet was sufficient in providing the complainant with the information requested. Owoh, slip op. at *13-14.

Upon review, the GRC finds that the facts in this matter parallel those in Owoh, slip op. In the instant matter, although the Complainant requested the “reason for separation,” he did not request any settlement agreements, plea agreements, or any other record that may relate to the officers’ separation. Rather, like Owoh the Complainant’s request sought the “reason for separation” without specifying any records that may contain that information. It was only until filing the instant matter that the Complainant suggested the “reason for separation” could be included in other records such as plea agreements. Thus, without further clarification from the Complainant, the Custodian provided a record containing the requested information.

Accordingly, the Custodian did not unlawfully deny access to the Complainant’s OPRA request seeking the “[n]ames, date of hire, date of separation and reason for separation and salary of individuals who either resigned or were terminated in the last 5 years from your police department.” N.J.S.A. 47:1A-6. The Custodian provided the Complainant with the “reason for separation” in accordance with N.J.S.A. 47:1A-10 and Libertarians, 250 N.J. 46, and was not obligated to provide records that were not requested by the Complainant. See also Owoh, slip op.

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, 432 (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 and salary of individuals who either resigned or were terminated in the last 5 years from your police department.” On January 6, 2021, the Custodian provided a spreadsheet containing the requested personnel information. The Complainant asserted that the response failed to provide the “real reason” for the officers’ separations. However, the evidence of record demonstrates that the Custodian provided the personnel information as required under N.J.S.A. 47:1A-10 and Libertarians, 250 N.J. 46, and was not obligated to provide records that the Complainant did not request until after filing the instant complaint. Thus, the Complainant has not achieved the desired result and is not a prevailing party in this complaint.

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 Complainants’ filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 71. Specifically, the Custodian properly responded to the Complainant’s request for personnel information required to be disclosed under N.J.S.A. 47:1A-10. 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 71.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the Complainant’s OPRA request seeking the “[n]ames, date of hire, date of separation and reason for separation and salary of individuals who either resigned or were terminated in the last 5 years from your police department.” N.J.S.A. 47:1A-6. The Custodian provided the Complainant with the “reason for separation” in accordance with N.J.S.A. 47:1A-10 and Libertarians for Transparent Gov’t v. Cumberland Cnty., 250 N.J. 46 (2022), and was not obligated to provide records that were not requested by the Complainant. See also Owoh ex rel. Afr. Am. Data & Rsch. Inst. v. Maple Shade Police Dep’t Burlington, 2024 N.J. Super. Unpub. LEXIS 445 (App. Div. 2024).
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 Complainants’ 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 Custodian properly responded to the Complainant's request for personnel information required to be disclosed under N.J.S.A. 47:1A-10. 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 71.

Prepared By: Samuel A. Rosado
Staff Attorney

April 23, 2024