



State of New Jersey

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Acting Commissioner

FINAL DECISION

March 26, 2024 Government Records Council Meeting

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

Complaint No. 2022-12

v.

Voorhees Township Police Department (Camden)
Custodian of Record

At the March 26, 2024 public meeting, the Government Records Council (“Council”) considered the March 19, 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 portion of the Complainant’s November 5, 2021 OPRA request seeking disclosable personnel information and separation agreements of police officers who separated from Voorhees Township. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Township provided all responsive records in its possession. See Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
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, 76 (2008). Specifically, the Custodian certified that she provided the Complainant with all responsive records in Voorhees Township’s possession and that no other responsive records exist. 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.

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 26th Day of March 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: April 1, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 26, 2024 Council Meeting**

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

GRC Complaint No. 2022-12

v.

**Voorhees Township 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: Dee Ober

Request Received by Custodian: November 5, 2021

Response Made by Custodian: November 18, 2021; November 22, 2021

GRC Complaint Received: January 20, 2022

Background³

Request and Response:

On November 5, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On November 18, 2021, the eighth (8th) business day after receipt, Kathleen Green responded on the Custodian’s behalf in writing, providing a spreadsheet containing the requested personnel information, along with four (4)

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

² Represented by Daniel Long, Esq., of Wade, Long, Wood & Long (Laurel Springs, NJ).

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.

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agreements between the Township of Voorhees (“Township”) and separated officers. On November 22, 2021, Ms. Green provided an addendum to the initial response, attaching personnel information for three (3) additional officers who retired from the Township during the requested period.⁴

Denial of Access Complaint:

On January 20, 2022, 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 also asserted that creating a new spreadsheet or list stating “terminated” or “resigned” or “retired” is not sufficient. The Complainant also stated that the response did not state whether any officers left due to a plea deal or court proceeding that precludes them from law enforcement positions.

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

Statement of Information:

On February 1, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 5, 2021. The Custodian certified that her search included assigning the request to Ms. Green. The Custodian certified that Ms. Green responded on her behalf on November 18, 2021, attaching the responsive records. The Custodian also certified that Ms. Green provided the Complainant with an amended response on November 22, 2021.

The Custodian initially argued that personnel information is generally exempt from OPRA barring certain exceptions. See N.J.S.A. 47:1A-10. The Custodian further asserted that OPRA did “not require the provision of the circumstances that may have caused an employee to choose to resign, the employee’s motivation for resigning, or anything beyond the reason for the employee’s ‘date of separation.’” Libertarians for Transparent Gov’t v. Ocean Cnty. Prosecutor’s Office, 2018 N.J. Super. Unpub. LEXIS 25, at *11-12 (App. Div. 2018).

The Custodian asserted that even if she was required to disclose the circumstances behind a separation, the Complainant’s reference to plea deals, convictions, or other court proceedings was not a request for specific records. The Custodian nevertheless contended that the Township did not have records of any of the identified employees being separated “due to plea deals, criminal convictions, criminal charges, sentences, and or other court agreement or court proceedings.”

Additional Submissions:

On February 5, 2022, the Complainant submitted a brief in response to the Complainant’s SOI. The Complainant asserted that the Custodian failed to provide the “real reasons” for

⁴ The GRC notes that while the evidence indicates the Custodian’s response was untimely and potentially insufficient, the Complainant did not raise the issue at any point during the adjudication of this matter. Thus, the GRC declines to address the issue.

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separation in response to his OPRA request.

The Complainant initially argued that the terms “terminated”, “retired”, or “resigned,” did not sufficiently provide the “reason for separation” because they were merely types of employment separations and did not adequately describe the underlying basis thereof. The Complainant argued that the “reason” for separation was likely located within a separate document constituting a government record, and the Custodian was obligated to retrieve that record, rather than create a spreadsheet or list containing the words “terminated”, “retired”, or “resigned.”

The Complainant next asserted 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.

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. Prosecutor’s Office, 465 N.J. Super. 11 (App. Div. 2020). 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 the Township 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 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 to comply fully and truthfully with the OPRA request. The Complainant also requested the GRC declare the Complainant a prevailing party and award counsel fees.⁵

On February 16, 2024, the GRC submitted a request for additional information to the Custodian. Specifically, the GRC inquired from where the Custodian obtained the personnel information provided to the Complainant on November 18, 2021 and November 22, 2021.

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. 2011-347 (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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On February 20, 2024, the Custodian responded to the GRC's request for additional information. The Custodian certified that the personnel information was collected from the Township's electronic database, Edmonds. The Custodian also certified that the spreadsheet was created by the Edmonds program. The Custodian further certified that there were no other responsive records.

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.

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian's certification that all such records were provided to the complainant. The Council held that the custodian's certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian's burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

Additionally, in Danis the Council determined that a public employee's "name, title, position, salary, payroll record and length of service" was information specifically considered to be a "government record" under N.J.S.A. 47:1A-10. 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). However, in that case the Council also held that a custodian was not required to disclose a record that did not exist in the format requested.

Further, while longstanding case law supports that a custodian is not required to create records to respond to OPRA requests, those requests seeking "information stored or maintained electronically" as defined in N.J.S.A. 47:1A-1.1 require a different analysis. In Paff v. Twp. of Galloway, 229 N.J. 340 (2017), the New Jersey Supreme Court determined there that an agency's electronically stored information is a "government record" under OPRA, unless otherwise exempt. The Court thus reversed the Appellate Division, holding that basic e-mail information stored electronically is a "government record" under OPRA, unless an exemption applies to that information. The Court reasoned that:

A document is nothing more than a compilation of information -- discrete facts and data. By OPRA's language, information in electronic form, even if part of a larger document, is itself a government record. Thus, electronically stored information extracted from an email is not the creation of a new record or new information; it is a government record.

. . . .

With respect to electronically stored information by a municipality or other public entity, we reject the Appellate Division's statement that "OPRA only allows requests for records, not requests for information." Paff, 444 N.J. Super. at 503, (quoting [Bent, 381 N.J. Super. at 37]). That position cannot be squared with OPRA's plain language or its objectives in dealing with electronically stored information.

[Id. at 353, 356.]

The Supreme Court's ruling in Paff squares with the Council's past decisions on the issue of coalescing information from electronic systems. Specifically, in Zahler v. Ocean Cnty. Coll., GRC Complaint No. 2013-266 (Interim Order dated July 29, 2014), the Council addressed the custodian's argument that she was not required to create a record to satisfy an OPRA request for database information pursuant to Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated February 27, 2008). Therein, the complainant sought access to a list of adjuncts to include certain information. The custodian produced a list that did not include all information sought; however, the evidence of record indicated that she could have produced a fully responsive record. Specifically, evidence existed to support that all information the complainant sought existed within a few different databases.

The Council first noted that the definition of a "government record" included "information stored or maintained electronically." N.J.S.A. 47:1A-1.1. The Council then distinguished the facts of Morgano and held that the custodian unlawfully denied access to the responsive list containing all elements identified in the subject OPRA request. The Council reasoned that:

The Morgano decision refers to compiling certain disclosable information from a paper record and listing or creating another paper record responsive to a request. However, in terms of certain electronic filing systems, general querying of information cannot be viewed as equal to creating a new paper record. While information stored electronically may include additional pieces of information/fields, many programs have the capability to extract requested information/fields for disclosure . . . Further, querying electronic file systems for responsive information is not unlike searching an e-mail account for e-mails responsive to an OPRA request.

[Id. at 12 (emphasis added).]

Thus, if the information sought is maintained electronically and can be provided as such, Paff and the GRC's prior decisions require disclosure. See also McBride v. City of Camden (Camden), GRC Complaint No. 2014-54 (Interim Order dated September 30, 2014).

In the instant matter, the Complainant requested the "[n]ames, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension of

individuals who either resigned or retired or terminated or otherwise separated from 2014 to the present” on November 5, 2021. On November 18, 2021 and November 22, 2021, Ms. Green responded in writing providing a spreadsheet containing the requested personnel information, and separation agreements for four (4) of the identified officers. The Complainant claimed the provided spreadsheet was insufficient to satisfy his request for the “reasons for separation.” The Complainant also contended the response failed to indicate whether officers were separated due to a plea agreement or court proceeding.

Upon review of the evidence, the GRC concludes that Paff and prior Council decisions support that the Custodian did not unlawfully deny access. In response to the GRC’s request for additional information, the Custodian certified that the provided spreadsheet was generated using the Edmunds program. Pursuant to Paff, the disclosed spreadsheet information was an acceptable responsive “government record” since it was derived from electronically stored information. 229 N.J. at 353. In conjunction with the four (4) separation agreements, the evidence demonstrates that the Custodian provided the Complainant with all available government records containing the “reasons for separation,” with the Complainant failing to provide evidence to the contrary.

Additionally, the Complainant’s objections to the disclosed spreadsheet format and Custodian’s alleged failure to provide an explicit answer as to whether any officers separated due to a plea deal or court proceeding is unfounded. Regarding the spreadsheet format, the Custodian certified that same was generated directly from the Edmunds program. Further, the Custodian was not obligated to provide the requested information in a format different from the one available in the Edmunds program. Regarding the explicit answer allegation, the Custodian was not obligated to manually note whether any officer separated due to a plea deal or court proceeding to ensure the record’s total completeness. See Matthews, GRC 2008-123. Notwithstanding, the Custodian certified that she disclosed all responsive agreements in the Township’s possession. Since the Complainant failed to provide evidence contradicting the Custodian’s certification, the facts make clear whether any officers separated due to a plea deal or court proceeding.

Accordingly, the Custodian did not unlawfully deny access to the portion of the Complainant’s November 5, 2021 OPRA request seeking disclosable personnel information and separation agreements of police officers who separated from the Township. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Township provided all responsive records in its possession. See Danis, GRC 2009-156, *et seq.*

Prevailing Party Attorney’s Fees

OPRA provides that:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . .; or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

[N.J.S.A. 47:1A-6.]

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Appellate Division held that a complainant is a “prevailing party” if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct. Id. at 432. Additionally, the court held that attorney’s fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct” (quoting Buckhannon Bd. & Care Home v. West Virginia Dep’t of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court held that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” Id. at 603 (quoting Black’s Law Dictionary 1145 (7th ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties . . .” Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863. Further, the Supreme Court expressed concern that the catalyst theory would spawn extra litigation over attorney’s fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

However, the Court noted in Mason that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, 387 N.J. Super. at 429; see, e.g., Baer v. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). “But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” 196 N.J. at 73 (citations omitted).

The Mason Court accepted the application of the catalyst theory within the context of OPRA, stating that:

OPRA itself contains broader language on attorney’s fees than the former RTKL did. OPRA provides that “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney’s fee.” N.J.S.A. 47:1A-6. Under the prior RTKL, “[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney’s fee not to exceed \$500.00.” N.J.S.A. 47:1A-4 (repealed 2002). The Legislature’s revisions therefore: (1) mandate, rather than permit, an award of attorney’s fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

[196 N.J. at 73-76.]

The Court in Mason, further held that:

[R]equestors are entitled to attorney’s fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) “a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved”; and (2) “that the relief ultimately secured by plaintiffs had a basis in law.” Singer v. State, 95 N.J. 487, 495, cert. denied, New Jersey v. Singer, 469 U.S. 832 (1984).

[Id. at 76.]

Here, the Complainant sought “[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 Custodian provided records containing the requested personnel information, and four (4) separation agreements. The Complainant then filed the instant complaint on January 20, 2022, asserting the Custodian failed to provide the “real reason” for the officers’ separations and state whether officers were removed due to a plea agreement or court proceeding. However, the Custodian certified in the SOI that the Township provided a complete response to the Complainant, and that no other responsive records exist containing the requested personnel information. 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 Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the Custodian certified that she provided the Complainant with all responsive records in the Township’s possession and that no other responsive records exist. 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 did not unlawfully deny access to the portion of the Complainant’s November 5, 2021 OPRA request seeking disclosable personnel information and separation agreements of police officers who separated from Voorhees Township. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Township provided all responsive records in its possession. See Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
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, 76 (2008). Specifically, the Custodian certified that she provided the Complainant with all responsive records in Voorhees Township's possession and that no other responsive records exist. 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.

Prepared By: Samuel A. Rosado
Staff Attorney

March 19, 2024