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DEPARTMENT OF COMMUNITY AFFAIRS  
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JACQUELYN A. SUÁREZ  
Commissioner

## FINAL DECISION

### April 29, 2025 Government Records Council Meeting

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

GRC Complaint No. 2022-124

v.

Mullica Township Police Department (Atlantic)  
Custodian of Record

At the April 29, 2025 public meeting, the Government Records Council (“Council”) considered the April 15, 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 unlawfully denied access to the requested complaints and summonses responsive to the Complainant’s March 29, 2022 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve CDR-1s via the eCDR database and could not use a distinctly separate record as a substitute, even if they contain similar information. See Simmons v. Mercado, 247 N.J. 24, 42, 45 (2022). The Custodian shall conduct a search for responsive records and provide same to the Complainant or certify that no responsive records exist.
2. **The Custodian shall comply with conclusion No. 1 above within twenty (20) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**
3. 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 was ordered to locate and provide the actual records sought by the Complainant. Further, the relief ultimately achieved had a basis in law. 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 29<sup>th</sup> Day of April 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: May 5, 2025**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 29, 2025 Council Meeting**

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

**GRC Complaint No. 2022-124**

**v.**

**Mullica Township Police Department (Atlantic)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of: Copies of summonses and complaints that were issued and or prepared by your police department relating to drug possession and drug paraphernalia from 2019 to present.<sup>3</sup>

**Custodian of Record:** Ann Lupinetti

**Request Received by Custodian:** N/A<sup>4</sup>

**Response Made by Custodian:** March 29, 2022

**GRC Complaint Received:** April 12, 2022

**Background<sup>5</sup>**

**Request and Response:**

On or before March 29, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 29, 2022, the Custodian responded to the Complainant in writing providing an “Arrest List” of individuals arrested for drug possession or drug paraphernalia from 2019 to present.

**Denial of Access Complaint:**

On April 12, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted the Custodian failed to provide the requested CDR-1 summonses and complaints. The Complainant asserted he responded to the Custodian on April 6, 2022, noting the missing CDR-1s, but did not receive a response.

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

<sup>2</sup> Represented by David C. Patterson, Esq. of Maressa Patterson, LLC (Berlin, NJ). Previously represented by Thomas G. Smith, Esq. (Northfield, NJ).

<sup>3</sup> The Complainant sought additional records that not at issue in this complaint.

<sup>4</sup> Neither party provides the date when the Custodian received the Complainant’s OPRA request.

<sup>5</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

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The Complainant requested the GRC order Mullica Township (“Township”) to comply with the Supreme Court decision Libertarians for Transparent Gov’t v. Cumberland Cnty., 250 N.J. 46 (2022), issued on March 7, 2022. The Complainant also requested the GRC award counsel fees.<sup>6</sup>

#### Statement of Information:

On June 27, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian was unable to certify when the Township received the request, but certified she responded to the Complainant in writing on March 29, 2022, providing the Arrest List.

The Custodian asserted that pursuant to Simmons v. Mercado, 247 N.J. 24, 30-31 (2021), CDR-1s no longer exists as a document. The Custodian asserted that what was subject to OPRA was the data used by a police officer to create an eCDR with the Judiciary. The Custodian asserted the information that would otherwise be contained in a CDR-1 was contained within the Arrest List provided to the Complainant. The Custodian asserted that information included the arrest number, arrest date, location, identity of the defendant, case number, involved officer, and charges for possession of a controlled dangerous substance or paraphernalia.

### 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.

Additionally, the Council has previously held that criminal complaints and summonses are subject to disclosure. Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004); see also Mawhinney v. Egg Harbor City Police Dep’t (Atlantic), GRC Complaint No. 2015-85 (January 2016).

In Simmons, the complainant requested the same or similar records as those at issue in the instant matter, with the custodian asserting the records were not maintained by the Millville Police Department (“MPD”) once its officers created and submitted the records through eCDR. Simmons, 247 N.J. at 32. The Court reversed the Appellate Division and found that the requested records were government records subject to disclosure under OPRA. Id. at 29. The Court found that notwithstanding which government branch created the CDR-1 and -2 forms, it is the information

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<sup>6</sup> 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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contained within those forms by MPD officers that is sought by AADARI. Id. at 40-41. Thus, the Court held that:

Because MPD officers create the completed CDR-1s by populating the forms with the information necessary to generate a summons and submit it to the court, there is no question that the CDR-1s are government records subject to disclosure pursuant to OPRA.

[Id.]

The Complainant filed the instant matter on April 12, 2022, stating the Custodian failed to provide the requested complaints and summonses, specifically the CDR-1 records for drug possession and paraphernalia offenses. In the SOI, the Custodian asserted the Simmons Court determined the information used to create an eCDR was a government record, and CDR-1s no longer existed as a document. The Custodian therefore argued that because the information contained within the Arrest Listing would also be used to generate an eCDR, providing the Arrest List satisfied the Complainant's request for complaints and summonses.

The GRC does not agree with the Custodian's interpretation of Simmons. While the Court acknowledged the importance of the information an officer inputs into eCDR, it explicitly stated, "there is no question that the CDR-1s are government records subject to the disclosure under OPRA". Id. at 40. At no point does the Court find that CDR-1s no longer exist as distinct records, only that law enforcement officers must utilize eCDR to electronically generate CDR-1s or CDR-2s. Id. at 30. The Court makes clear that what the requestor sought was, "the actual completed official *document* that contains the details of an arrest, probable cause, and an arrestee's biographical information." Id. at 40 (emphasis added).

Furthermore, the GRC disputes the Custodian's assertion that the information contained within a CDR-1 is also contained within the Arrest List. The Arrest List contains the defendant's biographical information, arrest date and location, case number, complaining officer, and the specific charges. However, the CDR-1 also provides space for the officer to provide details, such as the type of narcotic and/or the type of paraphernalia seized. Therefore, the Arrest Listing cannot be a substitute as they do not provide all the information that could be contained within a CDR-1 record.<sup>7</sup>

Accordingly, the Custodian unlawfully denied access to the requested complaints and summonses responsive to the Complainant's March 29, 2022 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve CDR-1s via the eCDR database and could not use a distinctly separate record as a substitute, even if they contain similar information. See Simmons, 247 N.J. at 42, 45. The Custodian shall conduct a search for responsive records and provide same to the Complainant or certify that no responsive records exist.

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<sup>7</sup> It should be noted that in Simmons, the complainant specifically requested and received "arrest listings" in addition to the summonses and complaints. 247 N.J. at 32. Moreover, the Court treated the arrest listings as distinct from CDR-1s and suggested the custodian could use the arrest listings to search for and generate the requested CDR-1s via the eCDR system. Id. at 45.

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## **Prevailing Party Attorney's Fees**

OPRA provides that:

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

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

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

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

However, the Court noted in Mason that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, 387 N.J. Super. at 429; see, e.g., Baer v. 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 complaints and summonses prepared by the Township's police department pertaining to drug paraphernalia and drug possession from 2019 to present. In response, the Custodian asserted that the provided Arrest List contained all the information that would otherwise be contained in the complaints and summonses and therefore satisfied the request. The Complainant then filed the instant complaint, asserting that the Township failed to provide complaints and summonses, or CDR-1 forms.

In determining whether the Complainant is a prevailing party entitled to attorney's fees, the GRC is satisfied that the evidence of record supports a conclusion in the affirmative. The GRC found that the Custodian was obligated to provide the actual records sought and could not provide a substitute record containing the same or similar information. The Custodian was therefore required to conduct a search for the CDR-1 forms as requested. Teeters, 387 N.J. Super. at 432. Thus, a causal nexus exists between this complaint and the change in the Custodian's conduct. Mason 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney's fees.<sup>8</sup>

Therefore, 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. 432. Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access

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<sup>8</sup> The Council makes this determination with the understanding that the Complainant acted on behalf of a bona fide client at the time of the request. Although the Complainant's status as representing an actual client has been previously challenged, the available evidence on the record is insufficient to address that issue herein. See Owoh, Esq. (O.B.O. AADARI) v. Neptune City Police Dep't (Monmouth), GRC Complaint No. 2018-153 (April 2020) and Owoh, Esq. (O.B.O. AADARI) v. Freehold Twp. Police Dep't (Monmouth), GRC Complaint No. 2018-155 (Interim Order dated September 29, 2020).

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Complaint and the relief ultimately achieved. Mason, 196 N.J. 51. Specifically, the Custodian was ordered to locate and provide the actual records sought by the Complainant. Further, the relief ultimately achieved had a basis in law. 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. 432, and Mason, 196 N.J. 51. **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.**

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian unlawfully denied access to the requested complaints and summonses responsive to the Complainant's March 29, 2022 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve CDR-1s via the eCDR database and could not use a distinctly separate record as a substitute, even if they contain similar information. See Simmons v. Mercado, 247 N.J. 24, 42, 45 (2022). The Custodian shall conduct a search for responsive records and provide same to the Complainant or certify that no responsive records exist.
2. **The Custodian shall comply with conclusion No. 1 above within twenty (20) business days from receipt of the Council's Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**
3. 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 was ordered to locate and provide the actual records sought by the Complainant. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

Prepared By: Samuel A. Rosado  
Senior Staff Attorney

April 15, 2025