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DEPARTMENT OF COMMUNITY AFFAIRS  
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JACQUELYN A. SUÁREZ  
Commissioner

## FINAL DECISION

### January 28, 2025 Government Records Council Meeting

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

Complaint No. 2022-136

v.  
Ocean City Police Department (Cape May)  
Custodian of Record

At the January 28, 2025, public meeting, the Government Records Council (“Council”) considered the January 21, 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’s March 24, 2022, response was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Specifically, the Custodian failed to indicate whether responsive settlements existed between the City of Ocean City and any separated police officer.
2. The Custodian performed an insufficient search for the portion of the Complainant’s OPRA request seeking agreements containing the reasons for separation. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the GRC declines to order disclosure of the record because Ms. Ballezzi disclosed same to the Complainant on January 2, 2024.
3. Notwithstanding the Custodian’s insufficient response, she did not unlawfully deny access to the portion of the Complainant’s OPRA request seeking disclosable personnel information of police officers who separated from the City of Ocean City. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, the City provided all responsive records in its possession. See Owoh, Esq. (O.B.O. AADARI) v. Voorhees Twp. Police Dep’t (Camden), GRC Complaint No. 2022-12 (March 2024); Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
4. The Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” See 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. See Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Custodian located a responsive agreement between the City of Ocean City and a separated officer after the instant complaint was filed. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 28<sup>th</sup> Day of January 2025

John A. Alexy, Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: January 30, 2025**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

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

**GRC Complaint No. 2022-136**

**v.**

**Ocean City Police Department (Cape May)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**<sup>3</sup> 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:** Melissa Rasner<sup>4</sup>

**Request Received by Custodian:** March 17, 2022

**Response Made by Custodian:** March 22, 2022; March 24, 2022

**GRC Complaint Received:** April 18, 2022

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

**Request and Response:**

On March 17, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 22, 2024, Nicole

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<sup>1</sup> The Complainant represents the African American Data & Research Institute, Baffi Simmons, and Delores Simmons.

<sup>2</sup> Represented by Dorothy F. McCrosson, Esq. of McCrosson & Stanton, P.C. (Ocean City, NJ).

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

<sup>4</sup> The current Custodian of Record is Jesse Moehlman.

<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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Driscoll responded on the Custodian's behalf in writing stating the City of Ocean City ("City") did not have records on the amount of pension for the separated officers. On March 24, 2022, Ms. Driscoll responded in writing again, providing a spreadsheet containing the requested personnel information, except for the amount of pension received.

#### Denial of Access Complaint:

On April 18, 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" or "left to go to other agency" 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 the GRC to order the Custodian 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 July 11, 2022, the Custodian filed a Statement of Information ("SOI"). The Custodian certified she received the Complainant's OPRA request on March 16, 2022. The Custodian certified the request was forwarded to Ocean City Police Department ("OCPD") and received the spreadsheet compiled by an OCPD secretary, Vickie Ballezzi. The Custodian certified that, on March 24, 2022, Ms. Driscoll provided the spreadsheet to the Complainant.

The Custodian argued the OPRA request sought information, not government records. The Custodian asserted that she nevertheless compiled and provided what personnel information was available.

#### Additional Submissions:

On December 18, 2024, the GRC submitted a request for additional information to the current Custodian. Specifically, the GRC inquired whether the information from the provided spreadsheet was collected from an electronic database, and whether the spreadsheet was created via Excel. Furthermore, the GRC inquired whether the City conducted a search for any agreements between the City and any separated officers at the time of the request, and whether any such agreements were located.

On January 2, 2025, the current Custodian responded to the GRC's request for additional information, providing a certification from Ms. Ballezzi. Ms. Ballezzi initially certified that

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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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personnel information within the spreadsheet was taken from an “internally, manually created spreadsheet.” Regarding agreements, Ms. Ballezzi certified that no search was conducted at the time of the request. Ms. Ballezzi then certified that, upon conducting a search, one agreement was located and attached to the response.

On January 13, 2025, the GRC submitted a second request for additional information, seeking clarification of Ms. Ballezzi’s certification. Specifically, the GRC inquired if the phrase “internally, manually created spreadsheet” meant the information in the spreadsheet provided to the Complainant was derived from an already existing spreadsheet. The GRC further inquired that if the answer was in the affirmative, was that spreadsheet maintained electronically or physically?

On January 16, 2025, the Custodian responded to the GRC’s additional request for information, providing another certification from Ms. Ballezzi. Ms. Ballezzi certified that OCPD possessed a “master spreadsheet” containing the requested information, which was maintained by Ms. Ballezzi as well as her predecessors as secretaries to the Police Chief.

### **Analysis**

#### **Sufficiency of Response**

OPRA provides that if a “custodian is unable to comply with a request for access, the custodian *shall indicate the specific basis therefor . . .* on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5(g) (emphasis added). In Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that “. . . [t]he Custodian’s response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).” See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Upon review, the GRC is satisfied the Custodian provided an insufficient response. Here, the Custodian responded to the Complainant’s OPRA request by providing a spreadsheet containing the responsive personnel information. However, the response failed to indicate whether any “agreement” existed between the City and the separated officers. It was not until the Custodian certified in the SOI that the records contained in the correspondence were responsive to the request for personnel information under N.J.S.A. 47:1A-10. Further, it was only in response to the GRC’s request for additional information that Ms. Ballezzi certified that no search was conducted at the time of the request. The facts here are on point with those in Paff; thus, it follows there was an insufficient response in the instant complaint.

Therefore, the Custodian’s March 24, 2022 response was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff, GRC 2007-272; Lenchitz, GRC 2012-265. Specifically, the Custodian failed to indicate whether responsive agreements existed between the City and any separated police officer.

#### **Sufficiency of Search**

It is the custodian’s responsibility to perform a complete search for the requested records

before responding to an OPRA request, as doing so will help ensure that the custodian's response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant's OPRA request existed. The custodian certified that after receipt of the complainant's denial of access complaint, which contained e-mails responsive to the complainant's request, the custodian conducted a second search and found records responsive to the complainant's request. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

In the instant matter, Ms. Driscoll provided the Complainant with a spreadsheet containing a portion of the requested personnel information on March 24, 2022. However, upon receiving the GRC's initial request for additional information, Ms. Ballezzi located and provided an agreement responsive to the Complainant's OPRA request. Therefore, the Custodian's initial search was inadequate as additional records were located after an additional search. Schneble, GRC 2007-220.

Accordingly, the Custodian performed an insufficient search for the portion of the Complainant's OPRA request seeking agreements containing the reasons for separation. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. However, the GRC declines to order disclosure of the record because Ms. Ballezzi disclosed same to the Complainant on January 2, 2025.

### **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.

### **Personnel Information**

Additionally, the Council in Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010) 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.

In the instant matter, the Complainant on March 17, 2022, 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 March 24, 2022, Ms. Driscoll responded in writing providing a spreadsheet containing the requested personnel information. The Complainant claimed the provided list 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.

While this matter was awaiting adjudication, the GRC issued its decision in Owoh, Esq. (O.B.O. AADARI) v. Voorhees Twp. Police Dep't (Camden), GRC Complaint No. 2022-12 (March 2024). There, the complainant raised the same objections as the instant matter, with the custodian providing a spreadsheet containing the requested personnel information. However, the Council found that in accordance with Paff, the provided spreadsheet was an acceptable form of disclosure, as it was generated through the agency's electronic database. 229 N.J. at 353. The Council further held that under Matthews, GRC 2008-123, the custodian was not obligated to explicitly denote whether an officer's separation was the result of a plea agreement or other court proceeding.

Here, the facts parallel those in Voorhees, GRC 2022-12. In response to the GRC's requests for additional information, Ms. Ballezzi certified that the information contained in the provided spreadsheet was derived from an already existing "master" spreadsheet. Ms. Ballezzi also certified that the spreadsheet was maintained electronically and has been since before her time with OCPD.

Accordingly, notwithstanding the Custodian's insufficient response, she did not unlawfully deny access to the portion of the Complainant's OPRA request seeking disclosable personnel information of police officers who separated from the City. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the City provided all responsive records in its possession. See Voorhees, GRC 2022-12; 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 (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 in part any “agreement[s]” between the Township and any separated police officer providing the “reason for separation.” In response, the Custodian provided



no records in response. The Complainant then filed the instant complaint on April 18, 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.

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. Upon receiving the GRC’s request for additional information, Ms. Ballezzi certified that she searched for and located a responsive agreement. Thus, a causal nexus exists between this complaint and the change in the Custodian’s conduct. See Mason, 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney’s fees.<sup>7</sup>

Therefore, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” See Teeters, 387 N.J. Super. at 432. Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. See Mason, 196 N.J. at 76. Specifically, the Custodian located a responsive agreement between the City and a separated officer after the instant complaint was filed. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney’s fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s March 24, 2022 response was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Specifically, the Custodian failed to indicate whether responsive settlements existed between the City of Ocean City and any separated police officer.
2. The Custodian performed an insufficient search for the portion of the Complainant’s OPRA request seeking agreements containing the reasons for separation. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the GRC declines to order disclosure of the record because Ms. Ballezzi disclosed same to the Complainant on January 2, 2024.

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<sup>7</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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3. Notwithstanding the Custodian's insufficient response, she did not unlawfully deny access to the portion of the Complainant's OPRA request seeking disclosable personnel information of police officers who separated from the City of Ocean City. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, the City provided all responsive records in its possession. See Owoh, Esq. (O.B.O. AADARI) v. Voorhees Twp. Police Dep't (Camden), GRC Complaint No. 2022-12 (March 2024); Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010).
4. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." See 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. See Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Custodian located a responsive agreement between the City of Ocean City and a separated officer after the instant complaint was filed. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

Prepared By: Samuel A. Rosado  
Senior Staff Attorney

January 21, 2025