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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 & Baffi Obafemi)
Complainant

GRC Complaint No. 2022-177

v.

Kinnelon Borough Police Department (Morris)
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’s March 16, 2022 response was insufficient because she failed to address each request item. See N.J.S.A. 47:1A-5(g); 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 agreements existed between Kinnelon Borough and any separated police officer.
2. 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 Borough. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Borough provided all responsive records in its possession. See N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
3. Notwithstanding the Custodian’s insufficient response, she did not unlawfully deny access to the portion of the Complainant’s March 16, 2022 OPRA request seeking disclosable personnel information of police officers who separated from Kinnelon Borough. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Borough 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 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 Kinnelon Borough's possession and that no agreements 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 29th 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 & Baffi Obafemi)¹
Complainant**

GRC Complaint No. 2022-177

v.

**Kinnelon Borough Police Department (Morris)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: Karen M. Iuele

Request Received by Custodian: March 16, 2022

Response Made by Custodian: March 28, 2022; March 29, 2022

GRC Complaint Received: May 9, 2022

Background³

Request and Response:

On March 16, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 28, 2022, the Custodian requested additional time to respond to the request. On March 29, 2022, the Custodian responded

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

² Represented by Biran T. Giblin, Esq. of Giblin & Gannaio, LLC (Oradell, NJ). Previously represented by Edward J. Buzak, Esq. of the Buzak Law Group, LLC (Montville, 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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to the Complainant in writing providing a spreadsheet containing the requested personnel information.

Denial of Access Complaint:

On May 9, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted 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 the response did not state whether any officers left due to a plea deal or court proceeding that precludes them from law enforcement positions. Furthermore, the Complainant asserted the time for compliance had expired.

The Complainant requested the GRC order Kinnelon Borough (“Borough”) 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.⁴

Statement of Information:

On August 31, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified the Borough received the Complainant’s OPRA request on March 16, 2022. The Custodian certified the request was forwarded to the Borough’s Payroll Department for processing. The Custodian certified the personnel information was obtained through the Borough’s payroll company, Action Data Service (“ADS”). The Custodian certified she responded to the Complainant in writing on March 29, 2022, providing the spreadsheet containing the personnel information.

The Custodian asserted that because she did not receive a reply from the Complainant, she believed the spreadsheet adequately satisfied his OPRA request. The Custodian contended that had the Complainant reached out to her to request the underlying documents containing the requested information, she would have furnished them. The Custodian asserted she provided the underlying documents to the Complainant as part of the SOI. The Custodian further stated that no agreements were entered into with any of the listed officers.

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

⁴ 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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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 that 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 Borough and the separated officers. It was not until the Custodian certified in the SOI that no responsive agreements exist. 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 29, 2022 response was insufficient because she failed to address each request item. See N.J.S.A. 47:1A-5(g); Paff, GRC 2007-272; Lenchitz, GRC 2012-265. Specifically, the Custodian failed to indicate whether responsive agreements existed between the Borough and any separated police officer.

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.

Agreements

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Here, in addition to the requested personnel information, the Complainant sought any “agreement” between the Borough and any separated officer containing the “reasons” for separation. Although the Custodian did not respond to this request item at the time, she certified in the SOI that no responsive agreements exist. Moreover, the Complainant failed to present any evidence that the Borough possessed same at the time of the request or to refute the Custodian’s certification.

Accordingly, notwithstanding the Custodian’s insufficient response, she has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking any “agreement[s]” between the Borough and the separated police officers. Specifically, the Custodian certified, and the record reflects, that no such records exist. See N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

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 Matthews the Council also held that a custodian was not required to disclose a record that did not exist in the format requested. Id.

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 March 16, 2022. On March 29, 2022, the Custodian 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 v. Twp. of Galloway, 229 N.J. 340, 353 (2017), the provided spreadsheet was an acceptable form of disclosure as it was generated through the agency’s electronic database. 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, as the Custodian certified in the SOI that the information contained within the spreadsheet was derived from the Borough’s ADS payroll system. Therefore, the Custodian’s response was permitted in accordance with Paff.

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 Borough. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Borough 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. The court further 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 in part 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." In response, the Custodian provided payroll records containing the requested personnel information. The Complainant then filed the instant complaint on April 7, 2022, asserting the Custodian failed to provide the "real reason" for the officers' separations. However, the Custodian certified in the SOI that the provided spreadsheet was generated from the Borough's electronic payroll system. Furthermore, while the Custodian submitted an insufficient response, she later certified that no responsive agreements exist. 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 Borough's possession and that no responsive agreements 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's March 16, 2022 response was insufficient because she failed to address each request item. See N.J.S.A. 47:1A-5(g); 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 agreements existed between Kinnelon Borough and any separated police officer.
2. 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 Borough. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Borough provided

all responsive records in its possession. See N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

3. Notwithstanding the Custodian's insufficient response, she did not unlawfully deny access to the portion of the Complainant's March 16, 2022 OPRA request seeking disclosable personnel information of police officers who separated from Kinnelon Borough. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, that the Borough 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 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 Kinnelon Borough's possession and that no agreements 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

April 15, 2025