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State of New Jersey  
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Commissioner

## FINAL DECISION

### May 20, 2025 Government Records Council Meeting

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

Complaint No. 2022-194

v.

Borough of Bogota Police Department (Bergen)  
Custodian of Record

At the May 20, 2025, public meeting, the Government Records Council (“Council”) considered the May 13, 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 performed an insufficient search for the portion of the Complainant’s OPRA request seeking settlement agreements with the Borough of Bogota pertaining to harassment or discrimination. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008). Specifically, the Custodian’s failure to locate the settlement agreement until after conducting an additional search following receipt of the Denial of Access Complaint resulted in an insufficient search. However, the GRC declines to order disclosure since the evidence demonstrates the Custodian provided the Complainant with the agreement on September 8, 2022, as part of the Statement of Information.
2. The Custodian unlawfully denied access to the requested complaints and summonses responsive to the Complainant’s March 28, 2022 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve responsive records created by the Bogota Police Department. See Simmons v. Mercado, 247 N.J. 24, 42 (2021). However, the GRC declines to order disclosure since the Custodian certified that copies of the complaints and summons were provided to the Complainant on September 8, 2022, as part of the Statement of Information.
3. 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 did not provide the Complainant with the requested records until 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 20<sup>th</sup> Day of May 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 27, 2025**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 20, 2025 Council Meeting**

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

**GRC Complaint No. 2022-194**

**v.**

**Borough of Bogota Police Department (Bergen)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:<sup>3</sup>

1. Copies of settlement agreements for discrimination and or harassment from 2014 to present.
2. 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 the present.
  - a. Marijuana
  - b. Other drugs

**Custodian of Record:** Yenlys Flores-Bolivard

**Request Received by Custodian:** March 28, 2022

**Response Made by Custodian:** April 2, 2022

**GRC Complaint Received:** May 16, 2022

**Background<sup>4</sup>**

**Request and Response:**

On March 28, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 2, 2022, the Custodian responded to item No. 1 of the Complainant’s request, stating no responsive records exist or alternatively, they were exempt from disclosure as personnel records under N.J.S.A. 47:1A-10. For item No. 2, the Custodian stated that no responsive records exist.

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

<sup>2</sup> Represented by William Betesh, Esq. of Boggia, Boggia, Betesh & Voytus, LLC (Ridgefield, NJ).

<sup>3</sup> The Custodian requested other records that are not at issue in this matter.

<sup>4</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.

Rotimi Owoh, Esq. (on Behalf of African American Data & Research Institute & Baffi Obafemi) v. Borough of Bogota Police Department (Bergen), 2022-194 – Findings and Recommendations of the Executive Director

### Denial of Access Complaint:

On May 16, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that item No. 1 was not precluded from disclosure under OPRA’s personnel records exemption. The Complainant next asserted the Custodian had an obligation to locate and provide responsive complaints and summonses pursuant to Simmons v. Mercado, 247 N.J. 24 (2021).

The Complainant requested the GRC compel the Borough of Bogota (“Borough”) to fully comply with the OPRA request and to award counsel fees.<sup>5</sup>

### Statement of Information:

On September 8, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified the Borough received the Complainant’s OPRA request on March 28, 2022. The Custodian certified she responded to the Complainant in writing on April 2, 2022, stating that no responsive records exist for item Nos. 1 & 2.

The Custodian first asserted that the Complainant did not copy the Borough upon submitting the Denial of Access Complaint. The Custodian asserted she was not aware of the complaint until receiving the request for the SOI.

The Custodian averred that regarding item No. 1, a settlement agreement was also attached to the SOI. The Custodian contended that the lawsuit was initially filed in 2012, and eCourts classified the case as “Employment/Non-LAD,” leading the Borough to believe the case fell outside the scope of item No. 1. The Custodian asserted that upon further review the Borough realized the Court mischaracterized the litigation and located a copy of the settlement agreement in the employee’s personnel file.

The Custodian further averred that regarding item No. 2, she recognized her obligation to provide the requested complaints. The Custodian asserted the Borough did not possess the records, but using its electronic database, the Borough identified cases pertaining to the requested offenses. The Custodian asserted she then logged into New Jersey Courts and located and printed each complaint/summons with matching case numbers. The Custodian asserted that copies of the complaint/summons were attached to the SOI.

## **Analysis**

### **Sufficiency of Search**

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

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<sup>5</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.

Rotimi Owoh, Esq. (on Behalf of African American Data & Research Institute & Baffi Obafemi) v. Borough of Bogota Police Department (Bergen), 2022-194 – Findings and Recommendations of the Executive Director

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 receiving the complaint, which contained e-mails responsive to the OPRA request, the custodian conducted a second search and found additional records responsive to the request. The GRC held 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, the Custodian responded to the Complainant's OPRA request, stating that no responsive agreements exist. The Custodian asserted she relied on the Judiciary's categorization of one case with the Borough to believe it was not responsive. After receiving the complaint, the Custodian reviewed the same case again, and discovered that the Judiciary's categorization was incorrect, and located a responsive settlement agreement within the employee's personnel file. Ultimately, notwithstanding the Judiciary's error, the Custodian failed to maintain her obligation to conduct an adequate and accurate search for responsive records under OPRA.

Accordingly, the Custodian performed an insufficient search for the portion of the Complainant's OPRA request seeking settlement agreements with the Borough pertaining to harassment or discrimination. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. Specifically, the Custodian's failure to locate the settlement agreement until after conducting an additional search following receipt of the Denial of Access Complaint resulted in an insufficient search. However, the GRC declines to order disclosure since the evidence demonstrates the Custodian provided the Complainant with the agreement on September 8, 2022, as part of the SOI.

### **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

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 conceded and recognized her obligations under Simmons to obtain copies of the requested complaints and summonses. The Custodian asserted the Borough located and provided the requested copies in conjunction with the SOI.

When considering the Court's decision in Simmons, the Custodian maintained the obligation to provide the Complainant with responsive records created by the Bogota Police Department ("BPD"). Notwithstanding whether BPD maintained physical copies of same, the Court held that since police departments created the CDR-1s and CDR-2s when inputting information, they were government records even if the records were maintained by the Judiciary's electronic databases. Simmons, 247 N.J. at 42.

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 responsive records created by BPD. See Simmons, 247 N.J. at 42, 45. However, the GRC declines to order disclosure since the Custodian certified that copies of the complaints and summons were provided to the Complainant on September 8, 2022, as part of the SOI.

### **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.]

In the instant matter, the Complainant sought complaints and summonses prepared by BPD pertaining to drug possession and drug paraphernalia. The Complainant also sought copies of settlement agreements for discrimination or harassment from 2014 to present. The Custodian responded on April 2, 2022, stating the Borough did not possess any responsive records. However, as part of the SOI, the Custodian provided records responsive to both request items to the Complainant on September 8, 2022.

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 conducted an insufficient search for settlements agreements, and it was not until after the complaint was filed that the Custodian reversed course and provided the Complainant with the responsive complaints and summons. 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>6</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. 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. 51. Specifically, the Custodian did not provide the Complainant with the requested records until after the instant complaint was filed. 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:

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<sup>6</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).

Rotimi Owoh, Esq. (on Behalf of African American Data & Research Institute & Baffi Obafemi) v. Borough of Bogota Police Department (Bergen), 2022-194 – Findings and Recommendations of the Executive Director



1. The Custodian performed an insufficient search for the portion of the Complainant's OPRA request seeking settlement agreements with the Borough of Bogota pertaining to harassment or discrimination. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). Specifically, the Custodian's failure to locate the settlement agreement until after conducting an additional search following receipt of the Denial of Access Complaint resulted in an insufficient search. However, the GRC declines to order disclosure since the evidence demonstrates the Custodian provided the Complainant with the agreement on September 8, 2022, as part of the Statement of Information.
2. The Custodian unlawfully denied access to the requested complaints and summonses responsive to the Complainant's March 28, 2022 OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve responsive records created by the Bogota Police Department. See Simmons v. Mercado, 247 N.J. 24, 42 (2021). However, the GRC declines to order disclosure since the Custodian certified that copies of the complaints and summons were provided to the Complainant on September 8, 2022, as part of the Statement of Information.
3. 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 did not provide the Complainant with the requested records until 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

May 13, 2025