State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

August 26, 2025 Government Records Council Meeting

Rotimi Owoh, Esq. (o/b/o African American Data & Research Institute & Baffi Obafemi)
Complainant
v.
Township of Brick Police Department (Ocean)
Custodian of Record

Complaint No. 2022-214

At the August 26, 2025, public meeting, the Government Records Council ("Council") considered the August 19, 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 has borne her burden of proof that the proposed special service charge of $720.00 comprised of 24 hours at an hourly rate of $30.00 to review 1,501 records and conduct a secondary review of the 458 resulting complaints responsive to the Complainant's OPRA request is warranted and reasonable. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 204 (Law Div. 2002); Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012); Owoh, Esq. (on Behalf of AADARI) v. Elizabeth Police Dep't (Union), GRC Complaint No. 2020-39 (Interim Order dated June 29, 2021). Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

2. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the proposed special service charge is warranted and reasonable. 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. 432, and Mason, 196 N.J. 51.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service

of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 26th Day of August 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: August 28, 2025

STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL

Findings and Recommendations of the Executive Director
August 26, 2025 Council Meeting

Rotimi Owoh, Esq. (on Behalf of African American Data & Research Institute & Baffi Obafemi)[1]
Complainant

GRC Complaint No. 2022-214

v.

Township of Brick Police Department (Ocean)[2]
Custodial Agency

Records Relevant to Complaint: Electronic copies via e-mail of summonses and complaints that were issued by the Township of Brick ("Township") Police Department ("BPD") relating to "drug possession and drug paraphernalia ("CDS") from 2019 to present.

Custodian of Record: Lynette A. Iannarone
Request Received by Custodian: March 29, 2022
Response Made by Custodian: April 5, 2022; April 6, 2022
GRC Complaint Received: May 19, 2022

Background[3]

Request and Response:

On an unknown date,[4] the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On April 5, 2022, Assistant Clerk Jessica L. Larney responded in writing on behalf of the Custodian stating that due to the "amount and volume of the documents requested," an extension of time to respond through May 4, 2022, would be necessary.

On April 6, 2022, Ms. Larney responded in writing on behalf of the Custodian stating that BPD advised her that it reached out for clarification on whether the Complainant sought actual complaints or a spreadsheet. Ms. Larney stated that because the Complainant has not responded the Township was proceeding with the assessment of a proposed special service charge for the actual complaints.

[1] The Complainant represents the African American Data & Research Institute ("AADARI") and Baffi Obafemi.
[2] Represented by Kevin Starkey, Esq., of Starkey, Kelly, Kenneally, Cunningham, Turnbach & Yannone (Toms River, 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.
[4] The Complainant stated "unsure of exact date" in the Denial of Access Complaint and neither party included a copy of that OPRA request as part of their submissions.

Ms. Larney stated that, per BPD, the Township will be disclosing CDR-1 and CDR-2 records for 2020 and 2021 free of charge because they were already processed. Ms. Larney stated that the Township needs to review a total of 1,501 complaints (1,285 complaints for 2019 and 216 complaints for 2022) to locate those complaints concerning a CDS violation. Ms. Larney stated that BPD spent an hour per 100 complaints performing the review for a total of fifteen (15) hours, which resulted in 458 CDS complaints. Ms. Larney stated that it would take an additional two (2) hours per 100 complaints to review the records for possible expungement and redaction, or nine (9) total hours. Ms. Larney further stated that the hourly rate of the lowest paid employee capable of responding to the request is $30.00 per hour. Ms. Larney thus stated that the proposed special service charge is $720.00 representing 24 hours at a cost of $30.00 per hour. Ms. Larney asked the Complainant to confirm receipt of the proposed special service charge.

Denial of Access Complaint:

On May 19, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant argued that the imposed special service charge to review and disclose CDR-1 summonses and complaints, which are disclosable under Simmons v. Mercado, 247 N.J. 24 (2021), was excessive. The Custodian noted that the records sought were electronically stored.

The Complainant requested the GRC order the Township to comply with the OPRA request without assessing the proposed charge. The Complainant also requested the GRC award counsel fees.

Statement of Information:

On September 29, 2022, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on March 29, 2022. The Custodian certified that the search included BPD accessing complaints through the eCDR system, which has no search ability to target CDS complaints. The Custodian certified that, after an extension of time, Ms. Larney responded in writing on her behalf on April 6, 2022, advising the Complainant of a proposed special service charge of $720.00.

The Custodian asserted, relating to the requested personnel information, no unlawful denial of access occurred. The Custodian argued that the Township engaged in a "good faith effort" to provide the Complainant with responsive information in lieu of actual records containing this information.

The Custodian asserted that the proposed special service charge was lawful under N.J.S.A. 47:1A-5(c) because responding to the Complainant's OPRA request required an extraordinary amount of time and effort. The Custodian noted that no charge was applied to CDR records for 2020 and 2021 because they were already processed in response to a separate OPRA request. The Custodian argued BPD required an extraordinary amount of time and effort to produce the remaining CDR records for 2019 and 2022. The Custodian averred that because eCDR did not contain a suitable search function, BPD was required to assign an employee to manually access and review each complaint for CDS violations. The Custodian averred that the employee would

then need to research whether the complaint was expunged, and if not, print it for review and redaction of confidential information.

The Custodian certified that Ms. Larney advised the Complainant of the proposed charge on April 6, 2022, and never received any pre-payment. Thus, the Township did not proceed. The Custodian argued that because the proposed special service charge was lawful and the Township timely responded advising the Complainant of that charge, this complaint should be dismissed.

Analysis

Special Service Charge

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.

Whenever a records custodian asserts that fulfilling an OPRA records request requires an "extraordinary" expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides that:

> Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an *extraordinary expenditure of time and effort to accommodate the request*, the public agency may charge, in addition to the actual cost of duplicating the record, a *special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies . . .*
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> [Id. (emphasis added).]

The determination of what constitutes an "extraordinary expenditure of time and effort" under OPRA must be made on a case-by-case basis and requires an analysis of a variety of factors. These factors were discussed in Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002). There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the "extraordinary burden" placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian's time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an "extraordinary expenditure of time and effort to accommodate" pursuant to OPRA:

(1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

The court determined that, in the context of OPRA, the term "extraordinary" will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. Id. at 202. "[W]hat may appear to be extraordinary to one school district might be routine to another." Id.

In Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012), the complainant sought in part motor vehicle recording MVR footage from the Rutgers University Police Department ("RUPD"). The custodian certified that there was one (1) out of the seventy-five (75) employees qualified to fulfill the complainant's OPRA request. The employee certified that he spent approximately twelve (12) hours fulfilling the entire request, but RUPD charged only for the two (2) hours spent locating and copying the requested MVR footage on his work computer. The employee also certified that while creating a copy of the footage, he was unable to perform any other work on his computer. The Council held that the disruption to the employee's regular duties, as well as the fact that RUPD did not charge the entire time expended to fulfill the request, warranted the special service charge.

Additionally, in Owoh, Esq. (on Behalf of AADARI) v. Elizabeth Police Dep't (Union), GRC Complaint No. 2020-39 (Interim Order dated June 29, 2021), the complainant requested similar records at issue here. The custodian asserted that the request involved approximately 1,300 records, totaling 9,100 pages, to review. The custodian also stated that each record would take ten (10) minutes to review, totaling over 216 hours. The custodian further stated that the total estimated cost was $7,740.52, which included $455.00 in copying costs. The Council found the special service charge was reasonable and warranted given the volume of records, the method of review, and the potential redactions needed for each record. See also Owoh, Esq. (O.B.O. Simmons & Simmons) v. Twp. of Howell (Monmouth), GRC Complaint No. 2021-102 (May 2024).

In complaints where the GRC is tasked with addressing a special service charge dispute, it must decide first whether the charge was warranted. If the GRC reaches a conclusion that the charge was warranted, then it must address whether the fee was reasonable. See, e.g. Rivera, GRC 2009-311; Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015).

Here, the Complainant disputed the proposed special service charge of $720.00, encompassing 24 hours of work at an hourly rate of $30.00 to review 1,501 complaints for 2019 and 2022 and to conduct a closer review of the resulting 458 CDR-1 CDS complaints. When special services charges are at issue, the GRC will typically require a custodian to complete a 14-point analysis questionnaire prior to deciding on the charge issue. However, the Custodian has

presented to the GRC enough information to make a determination absent submission of the questionnaire.

In first determining whether the assessed charge was warranted, the GRC persuaded that the facts here are like those in Rivera, GRC 2009-311, and more recently Owoh, Esq., GRC 2020-39. Although decided during the pendency of this complaint, the Council's decision in Owoh, GRC 2020-39, presents a comparable set of facts. Specifically, both agencies were tasked with having to review nearly 1,500 CDR-1 complaints for responsiveness. However, unlike in Owoh, Esq., the Custodian here certified that the first review took one hour per 100 complaints (or one report every minute and a half). Further, the Custodian certified that the second review of the remaining reports took about two hours per 100 complaints (or about three minutes).

In next determining whether the proposed charge is reasonable, the GRC is equally persuaded in the affirmative. Specifically, there exists a similar number of records, the Custodian here calculated for less time than in Owoh, Esq., and charged $30.00 per hour, as opposed to $34.00 in Owoh, Esq. Most importantly, and like in Owoh, Esq., the Custodian here is not charging for copying costs. All the foregoing supports that the proposed special service charge was reasonable and warranted.

Accordingly, the Custodian has borne her burden of proof that the proposed special service charge of $720.00 comprised of 24 hours at an hourly rate of $30.00 to review 1,501 records and conduct a secondary review of the 458 resulting complaints responsive to the Complainant's OPRA request is warranted and reasonable. N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. at 202; Rivera, GRC 2009-311; Owoh, Esq., GRC 2020-39. Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

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

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Appellate Division held that a complainant is a "prevailing party" if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct. Id. at 432. Additionally, the court held that attorney's fees may be awarded when the requestor is successful

(or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

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

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

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

> OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that "[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6. Under the prior RTKL, "[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney's fee not to exceed $500.00." N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the $500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.
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> [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 CDR-1 records from 2019 to the date of the OPRA request. The Custodian, through Ms. Larney, responded by proposing a special service charge of $720.00 with an explanation thereof. The Complainant then filed the instant complaint on May 19, 2022, arguing that the special service charge was excessive. However, upon review, the proposed charge is deemed to be warranted and reasonable. Thus, the Complainant is not a prevailing party.

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. 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. 51. Specifically, the proposed special service charge is warranted and reasonable. 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. 432, and Mason, 196 N.J. 51.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that the proposed special service charge of $720.00 comprised of 24 hours at an hourly rate of $30.00 to review 1,501 records and conduct a secondary review of the 458 resulting complaints responsive to the Complainant's OPRA request is warranted and reasonable. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 204 (Law Div. 2002); Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012); Owoh, Esq. (on Behalf of AADARI) v. Elizabeth Police Dep't (Union), GRC Complaint No. 2020-39 (Interim Order dated June 29, 2021). Thus, the Custodian shall disclose the responsive records, with redactions where applicable, to the Complainant upon receipt of the proposed special service charge. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

2. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the proposed special service charge is warranted and reasonable. 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. 432, and Mason, 196 N.J. 51.

Prepared By: Frank F. Caruso
Executive Director

August 19, 2025