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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
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JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

November 7, 2024 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2022-305

v.

Jackson Township (Ocean)
Custodian of Record

At the November 7, 2024, public meeting, the Government Records Council (“Council”) considered the October 29, 2024, 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 not borne her burden of proving that the Complainant’s request is invalid under OPRA as overly broad and requiring research; rather, the Complainant made a sufficiently specific request for copies of settlement agreements during a specified time period. N.J.S.A. 47:1A-6. As such, because the request was valid, the Custodian must disclose the requested records to the Complainant. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); Wronko v. Twp. of S. Brunswick (Middlesex), GRC Complaint No. 2017-237 (Interim Order November 12, 2019).
2. **The Custodian shall comply with conclusion No. 1 above within twenty (20) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**
3. The Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, following receipt of the complaint, the Council held that the Custodian unlawfully denied access to the requested records and ordered disclosure of the records. 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 7th Day of November 2024

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: November 12, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 7, 2024 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2022-305

v.

**Jackson Township (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Copies via electronic transmission of “all settlement agreements executed during the time period January 01, 2020 – June 16, 2022.”

Custodian of Record: Mary Moss

Request Received by Custodian: June 16, 2022

Responses Made by Custodian: June 16, 2022 and July 5, 2022

GRC Complaint Received: July 5, 2022

Background³

Request and Responses:

On June 16, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On that same date, the Custodian responded in writing to the Complainant’s request seeking clarification. The Custodian informed the Complainant that the request is overly broad, requiring research and that he must specify the lawsuits for which he is seeking settlement agreements. On June 19, 2022, the Complainant clarified the request by stating he is seeking the referenced settlement agreements for cases filed in the United States District Court or the New Jersey Superior Court. On July 3, 2022, the Complainant notified the Custodian he had not received a response to his OPRA request. On July 5, 2022, the Custodian responded to the request informing the Complainant that “there is no way to search or pull settlements simply by where they were settled, each file would have to be opened and reviewed which would require research, and OPRA is not an intended research tool.” The Custodian stated that the Complainant must specify the lawsuits for which he is seeking settlement agreements.

¹ Represented by Walter M. Luers, Esq., of Cohn Lifland Pearlman Herrmann & Knopf, LLP (Saddle Brook, NJ).

² No legal representation listed on record.

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.

Denial of Access Complaint:

On July 5, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he submitted an OPRA request to Jackson Township on June 16, 2022, and on that same date the Custodian responded informing him that clarification is required because the request is overly broad and would require research. The Complainant stated that the Custodian further informed him that he must specify the lawsuits for which he is seeking settlement agreements. The Complainant stated that he replied on June 19, 2022, informing the Custodian that he is seeking all settlement agreements for the time period specified for cases filed in the United States District Court or the New Jersey Superior Court. The Complainant stated that, on July 3, 2022, he notified the Custodian that he did not receive a response to his OPRA request. The Complainant stated that, on July 5, 2022, the Custodian responded by reiterating her June 16, 2022 response.

Statement of Information:

On July 11, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that the records responsive to the request are “any and all settlement agreements for cases filed in U.S. District Court or the N.J. Superior Court 1/1/20 – 6/16/22.” The Custodian certified that she requested clarification. The Custodian attached to the SOI copies of the June 16, 2022 request and responses, the Complainant’s June 19, 2022 clarification of the request, and the Custodian’s July 5, 2022 response to the request.

Additional Submissions:

On July 13, 2022, the Complainant’s Counsel replied to the Custodian’s SOI. Counsel stated that current case law provides that a request for settlement agreements does not have to contain the specific name or docket number of every case. Counsel cited Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) for the proposition that a request for settlement agreements that did not name the specific cases was a valid OPRA request. The Complainant’s Counsel also cited several GRC complaints wherein the Council also found that a request for settlement agreements does not need to specify the case for which a requestor is seeking settlement agreements; namely, Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-98 (January 2014), Cresci v. City of Bayonne (Hudson), GRC Complaint No. 2017-173 (Interim Order dated August 27, 2019), and Wronko v. Twp. of S. Brunswick (Middlesex), GRC Complaint No. 2017-237 (Interim Order dated November 12, 2019). Counsel concluded that, based upon the cited authorities, the Complainant’s OPRA request was valid

Analysis

Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants*

may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1.

[MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).]

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁴ N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

With respect to requests requiring research, the distinction between search and research is fact sensitive. That is, there are instances where the very specificity of a request requires only a search. As the Council determined in Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013), “. . . a valid OPRA request requires a search, not research . . . what will be sufficient to determine a proper search will depend on how detailed the OPRA request is, and will differ on a case-by-case basis. What a custodian is not required to do, however, is to actually read through numerous [records] to determine if same is responsive: in other words, conduct research.” Id.

For instance, in Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012), the complainant submitted OPRA requests seeking copies of meeting minutes containing motions to approve other minutes. The Council, determined that the requests were overly broad, because they “. . . seek minutes that refer to a topic and would require the Custodian to research the UCBOE’s meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant’s requests . . .” Id.

⁴ Affirmed on appeal from Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004).

In contrast, the court in Burnett, 415 N.J. Super. 506, evaluated a request for “[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. The Appellate Division determined that the request was not overly broad because it sought a specific type of document, despite failing to specify a particular case to which such document pertained. Id. at 515-16. Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) found a request for communications regarding *E-ZPass* benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. Id. at 176.

Subsequently where settlement agreements were at issue, the Appellate Division followed the court’s rationale in Burnett. In an unpublished decision, Wronko v. Twp. of Jackson, 2017 N.J. Super. Unpub. LEXIS 3058 (App. Div. 2017), the plaintiff requested, *inter alia*, “[c]opies of all litigation settlement agreements from January 1, 2010 through December 19, 2015 for [Jackson] Township.” The Appellate Division, finding that the request contained sufficient identifying information in accordance with Burnett, 415 N.J. Super. 506, and Burke, 429 N.J. Super. 169, found for the plaintiff and reversed and remanded the trial court’s determination that the request was invalid.

The GRC also found that a request for all settlement agreements during a specified time period was a valid request. In Wronko, GRC 2017-237, the complainant requested “all settlement agreements from January 1, 2014 through October 19, 2017.” The Council determined that, contrary to the custodian’s assertions, the request was not overly broad because the complainant made a sufficiently specific request for copies of settlement agreements during a specified time period.

Here, similar to the fact pattern in Burnett, the Complainant requested settlement agreements for a specific time period. As such, the complaint sought a specific type of document. And although the request did not specify a particular matter to which such document related; the request was not overly broad.

Therefore, the Custodian has not borne her burden of proving that the Complainant’s request is invalid under OPRA as overly broad and requiring research; rather, the Complainant made a sufficiently specific request for copies of settlement agreements during a specified time period. N.J.S.A. 47:1A-6. As such, because the request was valid, the Custodian must disclose the requested records to the Complainant. MAG, 375 N.J. Super. 534; Burnett, 415 N.J. Super. 506; Wronko, GRC 2017-237.

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 (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's June 16, 2022 OPRA request sought "all settlement agreements executed during the time period January 01, 2020 – June 16, 2022." The Custodian responded on that same date, asserting that the request was overly broad and required clarification. On June 19, 2022, the Complainant clarified the request by stating that he is seeking the referenced settlement agreements for cases filed in two specific courts. After the Custodian responded on July 5, 2022, insisting the request was overly broad, the Complainant filed the instant complaint alleging the Custodian unlawfully denied him access to the requested records.

In determining whether the Complainant is a prevailing party entitled to attorney's fees, the Council held that the Custodian unlawfully denied access to the requested settlement agreements and ordered their disclosure. Thus, pursuant to the Council's decision, a causal nexus exists between this complaint and the change in the Custodian's conduct. Mason, 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney's fees.

Therefore, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters, 387 N.J. Super. at 432. Additionally, a 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, following receipt of the complaint, the Council held that the Custodian unlawfully denied access to the requested records and ordered disclosure of the records. 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 has not borne her burden of proving that the Complainant's request is invalid under OPRA as overly broad and requiring research; rather, the Complainant

made a sufficiently specific request for copies of settlement agreements during a specified time period. N.J.S.A. 47:1A-6. As such, because the request was valid, the Custodian must disclose the requested records to the Complainant. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); Wronko v. Twp. of S. Brunswick (Middlesex), GRC Complaint No. 2017-237 (Interim Order November 12, 2019).

2. **The Custodian shall comply with conclusion No. 1 above within twenty (20) business days from receipt of the Council's Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**
3. The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, following receipt of the complaint, the Council held that the Custodian unlawfully denied access to the requested records and ordered disclosure of the records. 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: John E. Stewart

October 29, 2024