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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

February 18, 2025 Government Records Council Meeting

Kevin Kearns
Complainant

Complaint No. 2023-173

v.

Glassboro Police Department (Gloucester)
Custodian of Record

At the February 18, 2025, public meeting, the Government Records Council (“Council”) considered the February 11, 2025, Supplemental 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 a special service charge is warranted here. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002); Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012). However, the Custodian has failed to prove that the special service charge was reasonable. N.J.S.A. 47:1A-6. Specifically, the first component charging \$328.19 for Detective Mangione to perform 5.5 hours of work is reasonable. Id. Nevertheless, the second component charging \$31.79 for the Custodian to perform 1 hour of work is unreasonable. Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (Interim Order dated December 19, 2007). Thus, the Custodian shall review, redact (if applicable), and disclose to the Complainant the responsive records upon remittance of the adjusted special service charge of \$328.19.
2. The Complainant shall comply with conclusion No. 1 above within ten (10) business days from receipt of this Order by delivering to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant’s failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Should the Complainant remit payment, the Custodian shall provide access to the responsive records within twenty (20) business days following receipt of said payment.
3. 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).

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 18th Day of February 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: February 20, 2025

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 18, 2025 Council Meeting**

**Kevin Kearns¹
Complainant**

GRC Complaint No. 2023-173

v.

**Glassboro Police Department (Gloucester)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of all body-worn camera (“BWC”) and dash camera (“MVR”) recordings related to two (2) “Driving While Intoxicated” (“DWI”) incidents.

Custodian of Record: Melissa Rovin

Request Received by Custodian: July 19, 2023

Response Made by Custodian: July 21, 2023

GRC Complaint Received: July 23, 2023

Background³

Request and Response:

On July 19, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 21, 2023, the Custodian responded in writing stating that she identified seven (7) responsive BWC recordings and a “PC_Criminal_Offense” file. The Custodian stated that an extraordinary expenditure of time and effort would be necessary to compile, review, and redact (where applicable) the recordings, which results in a special service charge of \$359.98. N.J.S.A. 47:1A-5(c). The Custodian provided a detailed estimate as follows:

Employee:	Detective Corporal Haley Mangione	Custodian
Hourly rate:	\$59.67	\$31.79
Hours expended:	5.5 hours	1.0 hours
Estimate:	\$328.19	\$31.79
Total:	\$359.98	

¹ No legal representation listed on record.

² Represented by Timothy D. Scaffidi, Esq. and Gary M. Marek, Esq., of the Law Office of Timothy D. Scaffidi and Marek Law Firm, LLC (Woodbury, NJ; Mt. Laurel, 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.

Kevin Kearns v. Glassboro Police Department (Gloucester), 2023-173 – Findings and Recommendations of the Executive Director

On the same day, the Complainant e-mailed the Custodian asking her to reconsider the proposed special service charge or he would consider filing a Denial of Access Complaint. The Complainant contended that the Custodian “grossly misapplied” N.J.S.A. 47:1A-5(c) and that he was objecting to “an outrageous fee . . . to obtain [BWC] footage that the public has a right to see.” The Complainant further contended that OPRA’s special service charge provision only applied to “printed material,” and not BWC footage. The Complainant also asserted that he previously submitted at least fifty (50) similar OPRA requests and has not been charged by other municipalities.

The Complainant also argued that no reasonable expectation of privacy applies to the footage, which was taken in a public roadway. The Complainant asserted that, had he been on scene, he would have a First Amendment right to create his own film of the entire event without having to redact anything. The Complainant surmised that, based on the forgoing, the responsive recordings likely contain little redactable information.

On July 25, 2023, the Custodian responded stating that, upon consultation with the Borough of Glassboro’s (“Borough”) attorney, she maintained her imposition of a special service charge.

Denial of Access Complaint:

On July 23, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the proposed special service charge as an unlawful denial of access contending that the Custodian provided no evidence to suggest that his request is extraordinary in nature. The Complainant asserted that the GRC should require the Custodian to complete a 14-point analysis. The Complainant also argued that the special service charge provision in OPRA only applies to “printed material.” N.J.S.A. 47:1A-5(c). The Complainant asserted that his request sought BWC footage rather than printed material, and thus no “extraordinary expenditure of time” can apply here. The Complainant argued that if the Borough charge was upheld here, then every BWC footage request would result in a special service charge. The Complainant asserted that his OPRA request is common, and he has not been charged by other agencies for similar OPRA requests.

The Complainant also asserted that the footage was taken outside in a public area where no expectation of privacy applies. The Complainant further asserted that no evidence exists in the record that the Custodian did any analysis to determine what redactions should apply to the footage.

Statement of Information:⁴

On January 16, 2024, the Custodian filed a Statement of Information (“SOI”) attaching a legal certification from Detective Mangione. The Custodian certified that she received the Complainant’s OPRA request on July 19, 2023. The Custodian certified that her search included locating the responsive BWC footage, assessing the video length, and conducting a preliminary

⁴ On August 14, 2023, this complaint was referred to mediation. On November 30, 2023, this complaint was referred back to the GRC for adjudication.

assessment of redactions. The Custodian certified that she responded in writing on July 21, 2023, assessing a special service charge of \$359.98 that the Complainant subsequently rejected.

The Custodian argued that the assessed special service charge is warranted and reasonable under N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002). The Custodian argued that, as set forth in Detective Mangione's legal certification and the below, fulfilling this OPRA request results in a "substantial and extraordinary" task. The Custodian certified that her responses to the 14-point analysis are as follows:

1. What records are requested?

Response: BWC and MVR footage from two (2) DWI incidents.

2. Give a general nature description and number of the government records requested.

Response: Seven (7) BWC recordings and a "PC_Criminal_Offense" record.

3. What is the period of time over which the records extend?

Response: The footage is from separate DWI incidents occurring on different days.

4. Are some or all of the records sought archived or in storage?

Response: Records maintained on a limited access, secure server hosted by Axon.

5. What is the size of the agency (total number of employees)?

Response: The Borough Police Department is comprised of:

- 7 Administration employees.
- 41 full-time patrol members.
- 5 other patrol members.
- 3 Records employees.
- 1 civilian support staff.
- 1 administrative assistant.

6. What is the number of employees available to accommodate the records request?

Response: Two (2) employees are available to accommodate the request: one (1) Detective for redaction and the Custodian to compile and prepare the written response.

7. To what extent do the requested records have to be redacted?

Response: The BWC footage needs to be reviewed for potential redaction of privacy, security, medical, and other material exempt from disclosure. The extent of necessary redactions is unknown until the BWC footage is reviewed.

8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve, and assemble the records for copying?

Response: Not applicable because the records are stored electronically.

9. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?

Response: Not applicable

10. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to return records to their original storage place?

Response: Not applicable because the records are stored electronically.

11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?

Response: For purposes of maintaining “chain-of-custody and security,” records are maintained on Axon’s server. The only individual authorized and trained to access BWC footage is Detective Mangione. See Mangione Cert. ¶ 5.

12. Who (name and job title) in the agency will perform the work associated with the records request and that person’s hourly rate?

Response:

- (1) Detective Mangione at \$59.67 per hour.
- (2) The Custodian, a Senior Records Clerk, at \$31.79 per hour.

13. What is the availability of information technology and copying capabilities?

Response: Records maintained electronically, and copies are transmitted electronically.

14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce, and return the requested documents.

Response: It is estimated that Detective Mangione, who has multiple responsibilities within the Borough Police Department, would need 5.5 hours to review and redact the footage. This calculation was derived from the fact that BWC redaction is time consuming, but that past experience has resulted in the Borough providing conservative estimates to avoid potential refunds. See Mangione Cert. ¶7-9. Detective Mangione would not be able to perform any other duties during the review process, which comprises 15% of her workweek. Id. at ¶7, 13.

It is estimated that the Custodian would need 1 hour to advise the Gloucester County Prosecutor’s Office (“GCPO”) of the request with detail on the DWI incidents (as required

by the Attorney General Guidelines (“AG Guidelines”)) and crafting the written response (to include identification and specific lawful basis of all redactions).

The Custodian finally noted that, contrary to the Complainant’s “printed material” argument, the Council has long recognized the imposition of a special service charge for MVR footage, which is comparative to BWC footage. Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012). The Custodian also noted that the Council recently upheld a special service charge the Borough assessed at a time where the Police Department employed 66 persons. Owoh, Esq. (O.B.O. Baffi Simmons) v. Glassboro Police Dep’t (Gloucester), GRC Complaint No. 2020-157 (Interim Order dated February 22, 2022) (holding that the assessed fee was warranted, but not reasonable).

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 . . .*

[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, 360 N.J. Super. at 199. 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, GRC 2009-311, 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.

However, in Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (Interim Order dated December 19, 2007), the complainant sought meeting minutes from November 2005 to October 23, 2006. The custodian responded assessing a special service charge of \$84.40 based on 8 hours and 40 minutes to fulfill the OPRA request. Upon review, the Council determined that the proposed special service charge was excessive and unwarranted based on several factors. Among those factors, the Council held that the custodian was attempting to charge for tasks that were part of her duties as a custodian of record. Id. at 10.

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).

Initially, the GRC notes that the Complainant contended in the Denial of Access Complaint that the Custodian assessed a special service charge without first determining if redactions were required. However, OPRA specifically provides that a “requestor shall have the opportunity to review and object to the charge *prior to it being incurred*.” N.J.S.A. 47:1A-5(c) (emphasis added). Thus, a custodian has an obligation to estimate the cost and provide it to a requestor for acceptance or rejection prior to incurring same. See Owoh, Esq. (O.B.O. Delores Simmons, Baffi Simmons,

& Grace Woko) v. Magnolia Police Dep't (Camden), GRC Complaint No. 2021-115 (January 2023).

Moving on to the special service charge at issue here, the Custodian provided in her SOI a 14-point analysis that reflects the GRC's analytical framework outlined in Courier Post, 360 N.J. Super. 199, regarding the proper assessment of a special service charge. The Complainant's OPRA request sought BWC and MVR recordings from two (2) specific DWI incidents. The Custodian certified that seven (7) BWC recordings and a "PC_Criminal_Offense" record. The Custodian argued that the proposed charge of \$359.98 representing 5.5 hours of time for Detective Mangione to review and redact the responsive records and 1 hour for her to conduct response exercises required by the AG Guidelines and OPRA. The Custodian certified that 2 of the 58 Borough Police Department employees had the expertise necessary to comply with the request: Detective Mangione at \$59.67 per hour and herself at \$31.79 per hour. Further, the Custodian noted that all records were stored on a secure Axon network and no cost is associated with retrieving or returning the records. Finally, Detective Mangione certified that she would be unable to perform any other duties while reviewing the responsive records at a cost of 15% of her workweek.

In first determining whether the assessed charge was warranted, the GRC is persuaded that the facts here are like those in Rivera, GRC 2009-311. The Custodian's 14-point analysis and SOI provides comparable facts, such as agency size (75 there and 58 here), employees capable of performing the work (5 there and 2 here), and the fact that both the individual there and Detective Mangione would not be able to perform any other duties while working on the subject OPRA request. Based on the forgoing, the GRC is persuaded that a special service charge is warranted here.

Now that the GRC has determined that a special service charge is warranted here, it must determine whether the total proposed fee of \$359.98 was reasonable. In Courier Post, 360 N.J. Super. at 204, the court held that it would be appropriate to calculate the hourly wage rates of the clerical and professional staff involved in satisfying a request and multiplying those figures by the total hours spent, assuming that the custodian can prove that the professional level of human resource was needed to fulfill the request. Thus, as part of the calculation of a special service charge, a custodian must prove that same was based upon the lowest paid, qualified employee's hourly rate to perform the work required to respond to the subject OPRA request.

Here, the special service charge is broken into two (2) components. The first component reflects the 5.5 hours of time for Detective Mangione to review and redact the responsive records at an hourly rate of \$59.67. The second component reflects one (1) hour of time for the Custodian to notify the GCPO of the OPRA request in accordance with applicable AG Guidelines and prepare the written response at an hourly rate of \$31.79. The GRC will address each component separately below.

Regarding the first component, the GRC looks to Rivera, GRC 2009-311 and Detective Mangione's legal certification for direction on whether Detective Mangione's charge is reasonable. Detective Mangione is the only employee with authorization and the training necessary to access, review, and redact the responsive records. Additionally, and most like Rivera, Detective Mangione could not perform any other duties during her review and redaction of the records, which

would be 15% of her workweek. Thus, the charge of \$328.19 for Detective Mangione's work necessary to prepare the responsive records for disclosure is reasonable.

Regarding the second component, the GRC is not persuaded that the Custodian can charge for her 1 hour of time to contact GCPO and craft the written response. As was noted in Janney, GRC 2006-205, a special service charge is not meant to cover tasks or duties that were part of the Custodian's normal custodial duties. Further, there is no evidence in the record to indicate that the Custodian would be overly burdened by spending an hour of her workday contacting GCPO and performing her statutory duty of preparing a written response. Based on this, the charge of \$31.79 for the Custodian to perform her statutorily mandated duty is not reasonable.

Accordingly, the Custodian has borne her burden of proof that a special service charge is warranted here. See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. 191; Rivera, 2009-311. However, the Custodian has failed to prove that all of the special service charge was reasonable. See N.J.S.A. 47:1A-6. Specifically, the first component charging \$328.19 for Detective Mangione to perform 5.5 hours of work is reasonable. Id. Nevertheless, the second component charging \$31.79 for the Custodian to perform 1 hour of work is unreasonable. Janney, GRC 2006-205. Thus, the Custodian shall review, redact (if applicable), and disclose to the Complainant the responsive records upon remittance of the adjusted special service charge of \$328.19.

In closing, because the GRC is finding that the charge is warranted here, it does not address the Complainant's assertion that N.J.S.A. 47:1A-5(c) does not contemplate the imposition of a special service charge for any records other than in "printed material." Further, the Complainant's assertion that recordings taken in public have no reasonable expectation of privacy fails to appreciate that OPRA contains multiple privacy-based exemptions that agencies may rely on to deny access to or redact records when sought thereunder. N.J.S.A. 47:1A-1, N.J.S.A. 47:1A-1.1. Finally, the GRC notes that whether another agency did not impose a special service charge for a similar OPRA request is of no moment here. An agency may choose to assess such a charge where warranted and reasonable; however, not imposing the fee does not prohibit other agencies for doing so where appropriate.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that a special service charge is warranted here. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002); Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012). However, the Custodian has failed to prove that the special service charge was reasonable. N.J.S.A. 47:1A-6. Specifically, the first component charging \$328.19 for Detective Mangione to perform 5.5 hours of work is reasonable. Id. Nevertheless, the second component charging \$31.79 for the Custodian to perform 1 hour of work is unreasonable. Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (Interim Order dated December 19, 2007). Thus, the Custodian shall review, redact (if

- applicable), and disclose to the Complainant the responsive records upon remittance of the adjusted special service charge of \$328.19.
2. **The Complainant shall comply with conclusion No. 1 above within ten (10) business days from receipt of this Order by delivering to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Should the Complainant remit payment, the Custodian shall provide access to the responsive records within twenty (20) business days following receipt of said payment.**
 3. **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).**

Prepared By: Frank F. Caruso
Executive Director

February 11, 2025