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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

May 20, 2025 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2023-28

v.

Jackson Township (Ocean)
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 did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days as extended results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007). However, the GRC declines to order any further action because the evidence of record reveals that Custodian’s Counsel disclosed the responsive records to the Complainant on February 24, 2023.
2. 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, 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 Complainant submitted an OPRA request for settlement agreements and in a timely manner the Custodian responded, seeking clarification of the request. The Complainant complied and provided additional information. Thereafter, the Custodian unlawfully denied the Complainant access, and only disclosed the responsive records after the within 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 20th 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**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2023-28

v.

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

Records Relevant to Complaint: Copies via e-mail of “[a]ll settlement agreements executed during the time period June 17, 2022 – January 17, 2023.”

Custodian of Record: Mary Moss

Request Received by Custodian: January 17, 2023

Response Made by Custodian: January 17, 2023

GRC Complaint Received: February 6, 2023

Background³

Request and Response:

On January 17, 2023, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records.⁴ On the same date, Jasmine Powell, on behalf of the Custodian, acknowledged receipt of the OPRA request and asked for “the specific agreements and dates[.]” The Complainant replied on the same date stating, “I want settlement agreements of cases filed in United States District Court and New Jersey Superior Court that were settled during the time period June 17, 2022 – January 17, 2023.”

Denial of Access Complaint:

On February 6, 2023, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that he submitted his OPRA

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

² Represented by Kelsey A. McGuckin-Anthony, Esq. of Dasti, Murphy, McGuckin, Ulaky & Connors (Forked 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 initially submitted the OPRA request to Danielle Sinowitz. The Complainant received an autoreply from Ms. Sinowitz informing senders that she would be out of the office until January 25, 2023, but senders could receive immediate assistance by sending e-mails to the provided Clerk’s staff e-mail address. Immediately thereafter, the Complainant forwarded his request to the staff e-mail address.

request to Danielle Sinowitz on January 17, 2023, and received an autoreply informing him that she was out of the office and would respond to e-mails on January 26, 2023. The Complainant stated that the autoreply contained another e-mail address to which he forwarded the OPRA request on that same date. The Complainant further stated that on that same date, he received a response to his request asking him to “provide specific agreements and dates I want to obtain.” The Complainant stated that on the same date, he clarified the request by including the courts that had cases in which the settlement agreements were filed; however, he never received a further response from the Custodian.

Supplemental Response:

On April 4, 2023, Ms. Sinowitz e-mailed the GRC. Ms. Sinowitz informed the GRC that although Mary Moss is the Custodian, her “email was listed so someone was guaranteed to receive the requests[.]”

Statement of Information:

On April 21, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s request on January 17, 2023, and responded that same date seeking clarification. The Custodian certified that clarification of the request was received later that same date. The Custodian certified that on January 26, 2023, she sought legal advice from the Township attorney. The Custodian further certified that the Complainant submitted a Denial of Access Complaint on February 5, 2023.

The Custodian attached to the SOI a letter from the Custodian’s Counsel to the Complainant dated February 24, 2023. Counsel stated that she enclosed copies of settlement agreements responsive to the OPRA request and asked the Complainant to withdraw his complaint.

Analysis

Timeliness

Unless a shorter time period is otherwise provided, a custodian must grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond accordingly results in a “deemed” denial. Id. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁵ Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007).

⁵ A custodian’s written response, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

In Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2013-363 (July 2014), the custodian responded in writing on the seventh (7th) business day after receipt of the complainant's request, disclosing a map believed to be responsive to the request. Subsequently, the complainant notified the custodian that he was seeking a different map and provided a more detailed description. Fourteen (14) business days later, the custodian responded to the complainant attaching the responsive map. The Council determined that the custodian violated N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) because he did not respond to the clarified request in a timely manner. The Council held that "[u]pon receipt of th[e] clarification, the [c]ustodian again had seven (7) business days to either grant access, deny access, seek clarification or request an extension of time." Id.

Here, the Complainant submitted the OPRA request on January 17, 2023. On that same date, Ms. Powell, on behalf of the Custodian, responded to the request seeking clarification from the Complainant. The Complainant replied later that same date, providing the requested clarification. As such, the Custodian had seven (7) business days to again respond to the Complainant; therefore, the response was due no later than January 26, 2023. However, the evidence of record reveals that the Custodian failed to provide any further response to the Complainant.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days as extended results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11. However, the GRC declines to order any further action because the evidence of record reveals that Custodian's Counsel disclosed the responsive records to the Complainant on February 24, 2023.

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 filed an OPRA request on January 17, 2023, seeking settlement agreements from June 17, 2022 – January 17, 2023. On that same date, the Custodian responded and asked the Complainant to clarify the request. The Complainant replied later that same date, providing the requested clarification. Although the Custodian had seven (7) business days to again respond to the Complainant, the Custodian failed to provide any further response. On February 6, 2023, the Complainant filed the within complaint alleging the Custodian unlawfully denied him access to the requested records. On February 24, 2023, the Custodian’s Counsel disclosed the responsive records to the Complainant.

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 Council held that the Custodian unlawfully denied access to the requested settlement agreements pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i); however, declined to order disclosure because the Custodian’s Counsel disclosed said records after the complaint was filed. Thus, pursuant to the Council’s decision, 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.

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. at 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. at 76. Specifically, the Complainant submitted an OPRA request for settlement agreements and in a timely manner the Custodian responded, seeking clarification of the request. The Complainant complied and provided additional information. Thereafter, the Custodian unlawfully denied the Complainant access, and only disclosed the responsive records after the within 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).**

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days as extended results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order dated October 31, 2007). However, the GRC declines to order any further action because the

evidence of record reveals that Custodian's Counsel disclosed the responsive records to the Complainant on February 24, 2023.

2. 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, 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 Complainant submitted an OPRA request for settlement agreements and in a timely manner the Custodian responded, seeking clarification of the request. The Complainant complied and provided additional information. Thereafter, the Custodian unlawfully denied the Complainant access, and only disclosed the responsive records after the within 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: John E. Stewart

May 13, 2025