



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

May 21, 2024 Government Records Council Meeting

Rotimi Owoh, Esq. (o/b/o
Baffi Simmons & Grace Woko)
Complainant

Complaint No. 2021-81

v.

Borough of Elmer Police Department (Salem)
Custodian of Record

At the May 21, 2024 public meeting, the Government Records Council (“Council”) considered the May 14, 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 did not unlawfully deny access to the Complainant’s OPRA request seeking the “reason for separation . . . of individuals who either resigned or were terminated in the last 5 years from your police department.” N.J.S.A. 47:1A-6. The Custodian provided the Complainant with the “reason for separation” in accordance with N.J.S.A. 47:1A-10 and Libertarians for Transparent Gov’t v. Cumberland Cnty., 250 N.J. 46 (2022), and was not obligated to provide records that were not requested by the Complainant. See also Owoh ex rel. Afr. Am. Data & Rsch. Inst. v. Maple Shade Police Dep’t Burlington, 2024 N.J. Super. Unpub. LEXIS 445 (App. Div. 2024)
2. The Custodian unlawfully denied access to the Complainant’s request seeking the “names . . . of individuals who either resigned or were terminated in the last 5 years from your police department.” N.J.S.A. 47:1A-6. In compliance with N.J.S.A. 47:1A-10, the Custodian is obligated to provide the full name of public employees upon request as it is not exempt from disclosure. See Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010). The Custodian shall therefore locate and provide the full names of the separated officers.
3. **The Custodian shall comply with conclusion No. 2 above within ten (10) 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).**

4. 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. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Custodian did not provide the full names of officers who separated from the Borough of Elmer for the last five (5) years. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 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.**

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 21st Day of May 2024

Robin Berg Tabakin, Esq., 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 23, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 21, 2024 Council Meeting**

**Rotimi Owoh, Esq. (on Behalf of¹
Baffi Simmons & Grace Woko)**
Complainant

GRC Complaint No. 2021-81

v.

Borough of Elmer Police Department (Salem)²
Custodial Agency

Records Relevant to Complaint: Electronic copies via e-mail of the “[n]ames, date of hire, date of separation and reason for separation and salary of individuals who either resigned or were terminated in the last 5 years from your police department.”³

Custodian of Record: Captain Sarah D. Walker

Request Received by Custodian: January 19, 2021

Response Made by Custodian: January 19, 2021; January 27, 2021; February 8, 2021; February 17, 2021; February 22, 2021; February 24, 2021

GRC Complaint Received: April 19, 2021

Background⁴

Request and Response:

On January 19, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. That same day, the Custodian responded to the Complainant stating that a response would be provided on or before January 28, 2021. On January 27, 2021, the Custodian extended the time to respond again to February 8, 2021. On February 8, 2021, the Custodian extended the time again to February 17, 2021. On February 17, 2021, the Custodian extended the time again to March 1, 2021.

On February 22, 2021, the Custodian responded to the Complainant in writing providing a sheet containing the requested personnel information. That same day, the Complainant replied to the Custodian stating that she did not provide the “actual reasons for the resignations and retirements -- separations.” The Custodian responded asking whether what reasons the

¹ The Complainant represents Baffi Simmons & Grace Woko.

² Represented by Brian J. Duffield, Esq.

³ The Complainant sought additional records that are not at issue in this complaint.

⁴ 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.

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Complainant was seeking. The Custodian further stated that the Borough of Elmer (“Borough”) did not have any separations due to job performance. The Complainant responded stating they use the requested data to ensure police officers who are separated due to misconduct or while under investigation are not rehired at another department. The Custodian responded again stating that none of the separations were due to misconduct or while under investigation.

On February 24, 2021, the Custodian clarified that requesting the “reason for separation” was not a valid record but a request for information.

Denial of Access Complaint:

On April 19, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant first asserted that the Custodian failed to provide the “real reasons” for separation in response to his OPRA request, stating that it was a valid request and not a request for information.

The Custodian further contended that she did not provide the last or first name of the officers, but instead gave their titles such as “Batten Patrolman.”

The Complainant asserted that in many instances where a police officer is charged for crimes, they may enter a plea agreement which may require them to leave the police department or be removed from employment because of a conviction. The Complainant argued that it was insufficient for the Custodian to merely state the terms “retired”, “resigned”, or “terminated” as the reason for separation if the “real reason” was that the officer was compelled to separate as part of a plea agreement or sentence. The Complainant thus argued that the Custodian violated OPRA by not providing the “real reasons” for any of the separations listed in the spreadsheet.

The Complainant asserted that a guilty plea agreement between an officer and prosecutor is akin to a settlement agreement normally entered into in civil proceedings. Libertarians for Transparent Gov’t v. Cumberland Cnty., 465 N.J. Super. 11 (App. Div. 2020).⁵ The Complainant argued that civil settlement agreements are subject to OPRA, and therefore guilty plea agreements should also be subject to OPRA in accordance with Libertarians.

The Complainant contended that the Borough did not want to provide the “real reasons” for separation due to the pervasive culture and predisposition to protect officers convicted of misconduct. The Complainant argued that providing single word descriptions was only partially truthful and did not promote OPRA’s goal of transparency.

The Complainant asserted that as an example of police departments’ culture, he noted that in response to a similar OPRA request, Millville Police Department stated that two (2) officers “resigned” from the department. The Complainant asserted that in fact the two (2) officers pleaded guilty to criminal charges and as part of the agreement and sentencing they were required to be separated from the department.

⁵ Rev’d, 250 N.J. 46 (2022)

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The Complainant requested that the GRC compel the Custodian comply fully and truthfully with the OPRA request. The Complainant also requested that the GRC declare the Complainant a prevailing party and award Counsel fees.⁶

Statement of Information:

On May 4, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 19, 2021. The Custodian certified that she contacted the Police Chief and the Borough CFO to obtain the requested information. The Custodian certified that she provided the records on February 22, 2021 via a report created from the collected information.

The Custodian stated that the Brough did not have personnel records which identified a reason for separation other than “resignation” or “retirement.” The Custodian stated that when the Complainant wanted additional information, she stated to him that no resignations or retirements were the result of misconduct or personnel issues.

The Custodian further added that she was not aware that providing the full name would have been a more appropriate response but noted that this request sought information and not an actual government record. The Custodian stated that in the cases cited by the Complainant, the requestors sought specific records that may contain the reasons for separations, such as “plea agreements”, “court records”, and “settlement agreements.”

The Custodian maintained that the Complainant seeks records the Borough does not possess. The Custodian further maintained that there have been no officers separated due to a plea deal, conviction, or sentence imposed by a judge.

Additional Submissions:

On May 5, 2021, the Complainant submitted a brief in response to the Complainant’s SOI. The Complainant maintained the importance of providing the first and last name of employees in a request for personnel information. The Complainant asserted that when using the entire name of an officer, he was able to locate charges and complaints against the officer whereas they were not provided when using the officers last name only. That same day, the Complainant provided another response including another example of an officer whose first and last name provided additional information compared to using only a last name.

Analysis

Unlawful Denial of Access

⁶ The Complainant further noted that access to the records should have been granted under the “common law ‘right to access public records’.” However, the GRC does not have the authority to address a requestor’s common law right to access records. N.J.S.A. 47:1A-7(b); Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013); Kelly v. N.J. Dep’t of Transp., GRC Complaint No. 2010-215 (November 2011). Thus, the GRC cannot address any common law right of access to the requested records. Rotimi Owoh, Esq. (on Behalf of Baffi Simmons & Grace Woko) v. Borough of Elmer Police Department (Salem), 2021-81 – Findings and Recommendations of the Executive Director

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.

Regarding personnel records, OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011). These exceptions include “an individual’s name, title, position, salary, payroll record, length of service, *date of separation and the reason therefore*, and the amount and type of any pension received shall be government record.” N.J.S.A. 47:1A-10 (“Section 10”) (emphasis added).

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010), the Council determined that “name, title, position, salary, payroll record and length of service” is information which is specifically considered to be a “government record” under Section 10, and that “payroll records” must be disclosed pursuant to Jackson, GRC 2002-98. The Council thus held that the complainant’s March 25, 2009, request for “[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009” was a valid request pursuant to OPRA. Id. at 5. Additionally, prior GRC case law supports the disclosure of database information regarding personnel actions. See Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). Further, the Council has previously required that responding to an OPRA request for personnel information requires a custodian provide the most comprehensive records containing the responsive information. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012).

Reasons for Separation

During the pendency of this complaint, the New Jersey Supreme Court issued its opinion in Libertarians, 250 N.J. 46, that the GRC finds relevant and persuasive. In that case, the plaintiffs discovered through meeting minutes that a corrections officer was involved in a misconduct investigation along with several other officers. Id. at 49-50. The officer was originally going to be terminated but was allowed to “retire in good standing” after cooperating with the investigation, in accordance with a settlement agreement. Id. The plaintiffs then submitted an OPRA request seeking the settlement agreement referenced in the minutes, and the officer’s “name, title, position, salary, length of service, date of separation and the reason therefore” in accordance with Section 10. Id. The defendants declined to provide the settlement agreement, claiming it was a personnel record exempt from access. Id. As to the requested personnel information, the defendants stated via e-mail:

Officer Ellis was charged with a disciplinary infraction and was terminated. His title was as a Corrections Officer. His yearly salary was \$ 71,575. His date of hire was March 6, 1991. His date of separation was February 28, 2017. As indicated above, the reason for the separation was a disciplinary infraction.

[Id.]

The plaintiffs challenged the denial of access to the settlement agreement, asserting that the defendants “misrepresent[ed] the ‘reason’ for Ellis’s separation from public employment” and improperly withheld a government record. Id. The trial court ordered disclosure of the settlement agreement with redactions, and the Appellate Division reversed, finding that the record was exempt as a personnel record under Section 10.

The Court reversed the Appellate Division and ordered disclosure of the settlement agreement with redactions. The Court found that under OPRA, custodians were required to disclose the actual records containing the information required to be disclosed under Section 10. Id. at 56. The Court thus held that because the requested settlement agreement contained Section 10 information, the defendants were obligated to disclose the record with appropriate redactions. Id. at 57.

Additionally, during the pendency of this matter the GRC issued its decision in Owoh, Esq. (O.B.O. AADARI & Grace Woko) v. Maple Shade Police Dep’t (Burlington), GRC Complaint No. 2021-64 (July 2022). There, the Complainant submitted a request to the custodian identical to the request at issue. In response, the custodian provided a spreadsheet containing the requested personnel information, including a column indicating the “reason for separation” as either “resigned”, or “terminated”. The Complainant filed a complaint asserting the custodian failed to provide records which further elaborate on the reasons for separation. In distinguishing from Libertarians, 250 N.J. 46, the Council found that the Custodian failed to expressly seek settlement agreements containing the “reasons for separation.” The Council therefore held that the Custodian did not unlawfully deny access.

The Complainant thereafter filed an appeal of Maple Shade, GRC 2021-64. On March 18, 2024, the Appellate Division issued its decision in Owoh ex rel. Afr. Am. Data & Rsch. Inst. v. Maple Shade Police Dep’t Burlington, 2024 N.J. Super. Unpub. LEXIS 445 (App. Div. 2024). In affirming the Council, the Appellate Division found that the Complainant’s request did not seek specific documents, but only general information subject to disclosure under Section 10. Owoh, slip op. at *12. The court found that the custodian’s spreadsheet was sufficient in providing the Complainant with the information requested. Owoh, slip op. at *13-14.

Upon review, the GRC finds that the facts in this matter parallel those in Owoh, slip op. In the instant matter, although the Complainant requested the “reason for separation,” he did not request settlement agreements, plea agreements, or specify any other record that may contain the officers’ separation. Rather, like Owoh, slip op. the Complainant’s request sought the “reason for separation” without specifying any records that may contain that information. It was only upon filing the instant matter that the Complainant suggested the “reason for separation” could be included in other records such as plea agreements. Thus, without further clarification from the Complainant, the Custodian provided a record containing the requested information.

Accordingly, the Custodian did not unlawfully deny access to the Complainant’s OPRA request seeking the “reason for separation . . . of individuals who either resigned or were terminated in the last 5 years from your police department.” N.J.S.A. 47:1A-6. The Custodian provided the

Complainant with the “reason for separation” in accordance with N.J.S.A. 47:1A-10 and Libertarians, 250 N.J. 46, and was not obligated to provide records that were not requested by the Complainant. See also Owoh, slip op.

Names of Separated Officers

Regarding the names of separated officers, the Custodian provided the last name of the officer as well as their rank at the time of separation. In the SOI, the Custodian stated she was unaware that providing both the first and last names would have been more appropriate. In accordance with Danis, GRC 2009-156, a request seeking an employee’s name is considered a valid request under OPRA, and the Custodian is tasked with providing a complete response. There is nothing in OPRA or in prior case law suggesting that providing only the first or last name is sufficient to satisfy this element. Furthermore, the Custodian is obligated to provide the information with the most comprehensive records containing the responsive information. See Valdes, GRC 2011-64.

Accordingly, the Custodian unlawfully denied access to the Complainant’s request seeking the “names . . . of individuals who either resigned or were terminated in the last 5 years from your police department.” N.J.S.A. 47:1A-6. In compliance with N.J.S.A. 47:1A-10, the Custodian is obligated to provide the full name of public employees upon request as it is not exempt from disclosure. See Valdes, GRC 2011-64; Danis, GRC 2009-156. The Custodian shall therefore locate and provide the full names of the separated officers.

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, 432 (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 sought the "[n]ames, date of hire, date of separation and reason for separation and salary of individuals who either resigned or were terminated in the last 5 years from

your police department.” On February 22, 2021, the Custodian provided a spreadsheet containing the requested personnel information. The Complainant then filed the instant complaint on April 19, 2021, asserting the Custodian failed to provide the “real reason” for the officers’ separations and did not provide the full names of the separated officers.

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. Although the Custodian did not unlawfully deny access to the “reason for separation” of separated officers, she did unlawfully deny access to the “names” of those officers by not providing their full names in her response. Thus, 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.⁷

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. at 432. Additionally, no factual causal nexus exists between the Complainants’ filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 71. Specifically, the Custodian did not provide the full names of officers who separated from the Borough for the last five (5) years. 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. at 432, and Mason, 196 N.J. at 71.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the Complainant’s OPRA request seeking the “reason for separation . . . of individuals who either resigned or were terminated in the last 5 years from your police department.” N.J.S.A. 47:1A-6. The Custodian provided the Complainant with the “reason for separation” in accordance with N.J.S.A. 47:1A-10 and Libertarians for Transparent Gov’t v. Cumberland Cnty., 250 N.J. 46 (2022), and was not obligated to provide records that were not requested by the Complainant. See also Owoh ex rel. Afr. Am. Data & Rsch. Inst. v. Maple Shade Police Dep’t Burlington, 2024 N.J. Super. Unpub. LEXIS 445 (App. Div. 2024)
2. The Custodian unlawfully denied access to the Complainant’s request seeking the “names . . . of individuals who either resigned or were terminated in the last 5 years from your police department.” N.J.S.A. 47:1A-6. In compliance with N.J.S.A. 47:1A-10, the Custodian is obligated to provide the full name of public employees upon request as it is not exempt from disclosure. See Valdes v. Union City Bd. of Educ.

⁷ The Council makes this determination with the understanding that the Complainant acted on behalf of a bona fide client at the time of the request. Although the Complainant’s status as representing an actual client has been previously challenged, the available evidence on the record is insufficient to address that issue herein. See Owoh, Esq. (O.B.O. AADARI) v. Neptune City Police Dep’t (Monmouth), GRC Complaint No. 2018-153 (April 2020) and Owoh, Esq. (O.B.O. AADARI) v. Freehold Twp. Police Dep’t (Monmouth), GRC Complaint No. 2018-155 (Interim Order dated September 29, 2020).

Rotimi Owoh, Esq. (on Behalf of Baffi Simmons & Grace Woko) v. Borough of Elmer Police Department (Salem), 2021-81 – Findings and Recommendations of the Executive Director

(Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010). The Custodian shall therefore locate and provide the full names of the separated officers.

3. **The Custodian shall comply with conclusion No. 2 above within ten (10) 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).**

4. 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. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Custodian did not provide the full names of officers who separated from the Borough of Elmer for the last five (5) years. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 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.**

Prepared By: Samuel A. Rosado
Staff Attorney

May 14, 2024