



State of New Jersey

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Commissioner

FINAL DECISION

August 27, 2024 Government Records Council Meeting

John Paff
Complainant

Complaint No. 2022-662

v.

Wall Township (Monmouth)
Custodian of Record

At the August 27, 2024, public meeting, the Government Records Council (“Council”) considered the August 20, 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 OPRA request for the “payroll record” identifying the type of leave taken by Sgt. Cadigan during the identified time frame was invalid. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012).
2. The Custodian unlawfully denied access to information regarding Sgt. Cadigan’s leave status for the time frame identified in the subject OPRA request. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). However, the GRC declines to order any further disclosure because the Custodian acknowledged that Sgt. Cadigan was on paid leave during the identified time period and Complainant’s Counsel has acknowledged this disclosure.
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, 71 (2008). Specifically, the Custodian certified in the Statement of Information that Sgt. Cadigan was on paid leave for the duration of the time frame identified in the subject OPRA request. 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. 432, and Mason, 196 N.J. 51. **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 27th Day of August 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: August 29, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
August 27, 2024 Council Meeting**

**John Paff¹
Complainant**

GRC Complaint No. 2022-662

v.

**Wall Township (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of Sergeant (Sgt.) James Cadigan’s “payroll record” covering the period beginning May 1, 2022 and ending November 21, 2022.³

Custodian of Record: Roberta Lang

Request Received by Custodian: November 22, 2022

Response Made by Custodian: November 30, 2022

GRC Complaint Received: December 8, 2022

Background⁴

Request and Response:

On November 21, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Complainant noted that, according to Havlusch, Jr. v. Borough of Allenhurst (Monmouth), GRC Complaint No. 2011-243 (Interim Order dated December 18, 2012), “an employee’s payroll records should include information that will allow a person to determine whether an employee took a leave of absence, the dates of the leave, whether it was paid, and if so, the amount of salary received for the paid leave of absence.” The Complainant noted that he wished to obtain “information regarding . . . [Sgt.] Cadigan that is the subject of this request [such as] details” of leave during the specified time frame.

On November 30, 2022,⁵ the Custodian responded in writing, disclosing a list of Sgt. Cadigan’s gross pay per pay period within the identified time frame.

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

² Represented by Bradley D. Tishman, Esq. of Cleary, Giacobbe, Alfieri, Jacobs, LLC. (Oakland, NJ).

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.

⁵ The Custodian responded twice prior to November 30, 2022, extending the response time frame, presumably due to the presence of “immediate access” information sought by the Complainant. The GRC notes for purposes of this complaint that the Custodian’s response was timely.

Denial of Access Complaint:

On December 8, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian unlawfully denied access to the portion of Sgt. Cadigan’s payroll record showing his leaves of absence, the dates of same, whether the leave was paid or unpaid, and the amount paid for said leave. The Complainant argued that he specifically requested same and cited to Havlusch, Jr., GRC 2011-243, which quoted Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004); however, the Custodian “simply ignored” this portion of the request. The Complainant requested that the GRC: 1) order disclosure of the responsive payroll information; and 2) determine that the Complainant is a prevailing party entitled to reasonable attorney’s fees.

Statement of Information:

On February 15, 2023, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on November 22, 2022. The Custodian certified that her search included forwarding the OPRA request to Human Resources, who searched the Township of Wall’s (“Township”) payroll system and produced the collected data. The Custodian certified that she responded in writing on November 30, 2022, disclosing Sgt. Cadigan’s gross pay per pay period within the identified time frame.

The Custodian argued that she was not required to disclose the contested payroll information because the Complainant did not specifically seek same. The Custodian asserted that while he prefaced his request with a “Background” paragraph that “he would like details if Sgt. Cadigan was on leave,” same was “separate and apart” from his actual OPRA request. The Custodian contended that she did not “simply ignore” this aspect of his request; instead, the Complainant should be “penalized” for submitting an unclear OPRA request that could be subject to different interpretations.

The Custodian stated that, prior to the Complainant’s OPRA request, Sgt. Cadigan was placed on administrative leave with pay pending an investigation; thus, he received regular pay during the entire time frame identified in the subject OPRA request. The Custodian argued that the disclosure of Sgt. Cadigan’s gross pay was the appropriate response here.⁶ Further, the Custodian argued that Havlusch, Jr. is not applicable here because the Complainant did not request sign-in sheets. The Custodian also argued that Jackson provided that “payroll records” reflect only paid leave for sick or family leave based on a discussion of N.J.A.C. 12:16-4.2; neither of this type of paid leave was taken by Sgt. Cadigan during the identified time frame.

The Custodian argued in closing that she was only required to respond to “the four corners” of the Complainant’s OPRA request. The Custodian contended that the disclosed record achieved that purpose and there is no existing authority requiring payroll records to document paid administrative leave. The Custodian further reiterated that Sgt. Cadigan was on administrative leave with pay during the identified time period and thus no information was withheld from the Complainant.

⁶ The Custodian also noted that Sgt. Cadigan was suspended without pay in December 2022, after submission of and her response to the subject OPRA request.

Additional Submissions:

On February 23, 2023, Complainant's Counsel filed a sur-reply to the SOI. Counsel argued that the subject OPRA request was sufficiently specific by noting how Havlusch, Jr., GRC 2011-243 interpreted the term "payroll record" prior to requesting the exact same information. Counsel argued that the OPRA request took a "word-for-word" approach, and the Custodian was effectively noticed of the requirement to disclose information on paid or unpaid leave. Counsel noted that, while not providing this information in her original response, the Custodian admitted in the SOI that Sgt. Cadigan was on paid administrative leave. Counsel contended that there is no doubt the Complainant sought this information and that the Custodian failed to provide it.

Counsel argued that the GRC would nullify Havlusch, Jr. by accepting the Custodian's position, noting that it was similarly applied without modification in prior decisions. See e.g. Gordon v. City of Orange (Essex), GRC Complaint No. 2013-189 (Interim Order dated August 27, 2013); Latz v. Twp. of Barnegat (Ocean), GRC Complaint No. 2012-241, *et. seq.* (August 2013). Counsel also disputed that the Complainant did not seek specific records, because he in fact sought very specific records.

Counsel additionally contended that the type of leave is disclosable under OPRA and was not provided. Counsel argued that the Township admitted in the SOI that Sgt. Cadigan was on administrative leave with pay, but not when same started or how much pay he received while not working. Counsel argued that, "despite making these incomplete disclosures," the Custodian contended that Havlusch, Jr. or Jackson differentiated between sick, family, and other types of leave. Counsel argued that Jackson only discusses the disclosure of leave generally, and not within the confines of sick or family leave. Counsel further argued that administrative leave should be included in paid leaves because there exists greater public interest in leave associated with potential misconduct as occurred here.⁷ Counsel asserted that the Custodian's position gives greater access to employee medical issues over misconduct, which is a "backwards" interpretation not supported under OPRA.

Based on the foregoing, Counsel requested that the GRC order the Township to disclose the information regarding Sgt. Cadigan's administrative leave and the amount of pay during that period for the time frame identified in subject OPRA request. Counsel noted that because the Custodian has already stated that Sgt. Cadigan was not on unpaid leave or suspended, that information does not need to be provided again.

On March 7, 2023, Custodian's Counsel submitted a sur-reply.⁸ Initially, Counsel reiterated the Township's position that the cited case law is inapposite here because those complaints involved OPRA requests for sign-in sheets or time sheets. Counsel contended that, had the Complainant identified sign-in sheets, the Township would have provided them if they existed. Counsel contended that the Complainant instead submitted a vague request failing to identify the records sought, aside from directly quoting N.J.S.A. 47:1A-10. See Simmons v. Mercado, 247 N.J.

⁷ Counsel noted that on December 19, 2022, Sgt. Cadigan was charged with stealing over \$75,000 from a local Police Benevolent Association Chapter.

⁸ Custodian's Counsel sought and obtained an extension to comply with the sur-reply time frame set forth in N.J.A.C. 5:105-2.4(n).

24, 38 (2021); Spectraserv, Inc. v. Middlesex Cnty. Util. Auth., 416 N.J. Super. 565, 576 (App. Div. 2010); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Burke v. Ocean Cnty., 2013 N.J. Super. Unpub. LEXIS 2844 (App. Div. 2013). Counsel contended that OPRA requests are not equivalent to discovery requests and that usage of a statutory term does not mean an OPRA request is valid.

Counsel further asserted that the Custodian was not required to glean from the “Background” section of the OPRA request exactly the information sought because the Custodian was not required to conduct research. Paff v. Galloway Twp., 229 N.J. 340 (2017); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 237 (App. Div. 215). Counsel argued that the Custodian disclosed those records she believed responsive and could not have known that “payroll record” could include administrative leave. Counsel further argued that the subject OPRA request clearly required analysis and interpretation of case law followed by an exercise of judgement to determine the records sought. See Simmons, 246 N.J. at 44 (*quoting Burke v. Brandes*, 429 N.J. Super. 169, 177 (App. Div. 2012)). Counsel contended that to accept the subject OPRA request as valid is to require custodians to research cited case law placed in any request to determine the scope of records sought.

Counsel finally argued that contrary to Complainant Counsel’s “greater public interest” arguments, N.J.S.A. 47:1A-10 exempts access to records related to employee misconduct. See Libertarians for Transparent Gov’t v. Cumberland Cnty., 465 N.J. Super. 11, 20 (App. Div. 2020) (*rev’d on other grounds* 250 N.J. 46 (2022)). Counsel thus argued that the public is not legally entitled to information on leave due to potential misconduct issues. Counsel further argued that disclosure during an investigation could result in a negative perception of the employee even if they were found to have not committed misconduct. Counsel argued that instead, an employee utilizing accumulated leave time “permitted” by statute is plainly the type of leave contemplated as a “payroll record.” Counsel contended that because the subject OPRA request was submitted before Sgt. Cadigan was charged, the Township would have been legally precluded from releasing administrative leave information.

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 ABC, 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. at 549 (emphasis added). Bent, 381 N.J. Super. at 37;⁹ 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).

Moreover, 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 N.J.S.A. 47:1A-10, and that “payroll records” must be disclosed pursuant to Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). 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).

Here, the Complainant requested in part Sgt. Cadigan’s “payroll record” from May 1, 2022 through November 21, 2022, noting that he wished to obtain “information regarding . . . [Sgt.] Cadigan that is the subject of this request [such as] details” of leave during that time frame. The Custodian responded to the Complainant disclosing a bi-weekly pay for the relevant time period. This complaint followed, where the Complainant contended that the Custodian failed to disclose information related to Sgt. Cadigan’s leave.

⁹ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).

In the SOI, the Custodian loosely asserted the subject OPRA request was unclear because the “Background” portion was separate from the actual request. In a subsequent submission, the Custodian provided a more focused argument regarding the validity of the subject OPRA request. Therein, the Custodian argued that the Custodian failed to seek attendance sheets, which the Denial of Access Complaint arguments appear to identify as the disputed responsive record. The Custodian further argued that usage of a statutory term (“payroll record”) is not a valid OPRA request and she could not have known that “administrative leave” was a “payroll record.” The Custodian finally argued that she was not required to research the “Background” section of the OPRA request to determine those records sought. The Custodian argued that accepting the subject OPRA request as valid would require a custodian to read case law to determine applicable records.

Upon review, the GRC is persuaded that the subject OPRA request was valid both in the records sought and how the “Background” paragraph clearly identified that the Complainant sought leave information. Specifically, the Council’s decision in Danis, GRC 2009-156, supports that the identification of those terms contained in N.J.S.A. 47:1A-10 constitute a valid OPRA request. Further, the Council has long held that a custodian’s obligation when receiving such a request is to provide the most comprehensive record containing that information. Valdes, GRC 2011-64. Here, the Complainant endeavored to add color to the term “payroll record” by seeking “details” as to whether Sgt. Cadigan was on leave during the time frame identified in the OPRA request.

Contrary to the Custodian’s arguments, she was not required to research Havlusch, Jr., GRC 2011-243, to complete the request. The Complainant provided a quoted statement from the Council’s decision indicating the requirement of a custodian to disclose information regarding leaves of absence. Further, the “Background” paragraph is not unreasonably confusing or onerous: it provides a direct statement that the Complainant’s request for “payroll information” should include leave information. In a way, the Complainant narrowed the records sought within the confines of a “payroll record,” especially considering that OPRA provides no limited definition for the term. Finally, the GRC does not agree that the subject OPRA request is like any of the law cited by the Custodian. The cited portions of that case law either set forth basic OPRA legal framework or addressed requests that were inherently broad. See *e.g.* Burke, 2013 N.J. Super. Unpub. LEXIS 2844, 2 (the request “more closely resembled lawsuit discovery demands . . .”).

Therefore, the Custodian has not borne her burden of proving that the Complainant’s OPRA request for the “payroll record” identifying the type of leave taken by Sgt. Cadigan during the identified time frame was invalid. N.J.S.A. 47:1A-6; Danis, GRC 2009-156; Valdes, GRC 2011-64.

Unlawful Denial of Access

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.

OPRA provides that, “[n]otwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency . . . shall not be considered a government record . . .” N.J.S.A. 47:1A-10. 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, 592 (2011). Further, the personnel record exemption may apply to records that “bear many of the indicia of personnel files.” N. Jersey Media Grp. v. Bergen Cnty. Prosecutor’s Office, 405 N.J. Super. 386, 390 (App. Div. 2009); Rodriguez v. Kean Univ., GRC Complaint No. 2013-296 (June 2014).

Regarding payroll records, in Jackson, GRC 2002-98, the Council was tasked with defining the term “payroll record” because that term is undefined in OPRA. The Council looked to the ordinary meaning of the term as set forth in Black’s Law Dictionary (7th Ed., 1999) and N.J.A.C. 12:16-2.1, a Department of Labor regulation entitled “Payroll records.” The Council held that “payroll” records referred to the following:

Every employing unit having workers in employment, regardless of whether such unit is or is not an “employer” as defined in the Unemployment Compensation Law, shall keep payroll records that shall show, for each pay period:

1. The beginning and ending dates;
2. The full name of each employee and the day or days in each calendar week on which services for remuneration are performed;
3. The total amount of remuneration paid to each employee showing separately cash, including commissions and bonuses; the cash value of all compensation in any medium other than cash; gratuities received regularly in the course of employment if reported by the employee, or if not so reported, the minimum wage rate prescribed under applicable laws of this State or of the United States or the amount of remuneration actually received by the employee from his employing unit, whichever is the higher; and service charges collected by the employer and distributed to workers in lieu of gratuities and tips;
4. The total amount of all remuneration paid to all employees;
5. The number of weeks worked.

[Id.]

Here, the Complainant sought Sgt. Cadigan’s “payroll record,” and more specifically “information regarding . . . [Sgt.] Cadigan that is the subject of this request [such as] details” of leave during the specified time frame. The Custodian responded, disclosing a list of Sgt. Cadigan’s bi-weekly gross payments for the identified time frame. This complaint followed, wherein the Complainant argued that the Custodian failed to disclose the portion of the record showing Sgt. Cadigan’s leave information. The Custodian requested that the GRC order disclosure of the responsive information and award attorney’s fees.

In the SOI, the Custodian argued that Havlusch, Jr. did not apply because the Complainant did not seek attendance records. Further, the Custodian argued that Jackson limited disclosure to only paid sick leave or family leave per N.J.A.C. 12:16-4.2. Finally, the Custodian noted that Sgt.

Cadigan was on administrative leave with pay during the time frame identified in the subject OPRA request. In his sur-reply, Complainant's Counsel objected to a narrow interpretation of Jackson. Complainant's Counsel also argued that although the Custodian confirmed Sgt. Cadigan's leave status in the SOI, she failed to provide the leave start date and amount of pay during the leave. In his response, Custodian's Counsel maintained her position that Havlusch, Jr. and Jackson did not apply because the Complainant did not seek attendance records. Custodian's Counsel also argued that information about leave related to misconduct was exempt from disclosure under OPRA. Libertarians, 465 N.J. Super. at 20.

Initially, the GRC notes that, although the OPRA request at issue in both Havlusch, Jr., GRC 2011-243 and Jackson, GRC 2002-98, sought attendance records, this does not diminish the Complainant's intended applicability here. In fact, the cited portion of Havlusch, Jr., in the Complainant's OPRA request is a quote cite from Jackson. Further, the GRC routinely cites to Jackson when addressing many different types of records and information that could be considered part of a "payroll record." See, e.g., Moore v. Twp. of Nutley (Essex), GRC Complaint No. 2009-186 (Interim Order dated June 29, 2010) (addressing records regarding "stipends, bonuses, overtime, expenses and any other form of financial or non-financial compensation"); Roarty v. Secaucus Bd. of Educ. (Hudson), GRC Complaint No. 2009-221 (January 2011) (addressing records regarding sick time accumulation); Lotito v. N.J. Dep't of Labor, Human Res., GRC Complaint No. 2013-65 (March 2014) (addressing records regarding wage raises); Whiteside v. Twp. of Little Falls (Passaic), GRC Complaint No. 2021-89 (Interim Order dated February 28, 2023) (addressing records containing payments made for compensatory time). Thus, the GRC will consider these decisions as part of its determination.

Turning to the actual issue here, the GRC is compelled to find that an unlawful denial of access occurred to the requested leave information. Specifically, paid leave is clearly part of an individual employee's "payroll record" as discussed in Jackson. Specifically, an employee on paid leave is receiving remuneration, which is obviously consistent with the "payroll record" definition advanced in Jackson. Further, the Custodian's attempt to limit that definition to only certain types of leave is inapposite to the broader definition of a "payroll record" considered by the Council. Instead, Jackson looks to not only a limited definition set forth by the Unemployment Compensation Law, but also a more general definition contained in Black's Law Dictionary (7th Ed., 1999). Armed with both definitions, the Council has maintained that any records or information relating to a government employee's work schedule, remuneration, other compensation, and leave time are disclosable as part of a "payroll record" (with certain exceptions). The GRC also rejects the Custodian's argument that paid leave information is exempt from disclosure under N.J.S.A. 47:1A-10. The disclosure of paid leave information is significantly different from records associated with a disciplinary or misconduct investigation or action. There is an obvious separation between basic leave information and the underlying reasons therefor.

Based on the foregoing, the GRC finds that the Custodian was required to disclose information or a record identifying the type of leave Sgt. Cadigan was on during the identified time frame. To this end, the Custodian confirmed in the SOI that Sgt. Cadigan was on paid leave during the entire time frame provided by the Complainant. Further, Complainant's Counsel acknowledged this disclosure in the sur-reply.

Accordingly, the Custodian unlawfully denied access to information regarding Sgt. Cadigan's leave status for the time frame identified in the subject OPRA request. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Jackson, GRC 2002-98. However, the GRC declines to order any further disclosure because the Custodian acknowledged that Sgt. Cadigan was on paid leave during the identified time period and Complainant's Counsel has acknowledged this disclosure.

In closing, Complainant's Counsel insinuates in his sur-reply that the Custodian's failure to identify the start date of Sgt. Cadigan's paid leave and the total amount paid for the entire period represented an "incomplete disclosure." The GRC agrees that the Custodian was required to provide information or records on the applicable leave during the time frame identified in the subject OPRA request. However, based on a plain reading of the subject OPRA request, the Custodian was not required to identify the full length of leave and total pay because the Complainant did not request it. Ultimately, requiring the Custodian to disclose additional records or information outside of the time frame contained in the OPRA request is beyond the scope of this review.

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 stated that the phrase "prevailing party" is a legal term of art that refers to a "party in whose favor a judgment is rendered." (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.

[Mason 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.]

The Complainant filed the instant complaint contending that the Custodian failed to disclose Sgt. Cadigan’s leave information for the time period May 1, 2022 through November 21, 2022. The Complainant requested that the GRC order the Custodian to disclose the responsive leave information. In the SOI, although the Custodian argued the reasons she believed she was not required to disclose such information, she acknowledged that Sgt. Cadigan was on paid leave during the identified time frame. In the sur-reply, Complainant’s Counsel acknowledged the Custodian’s admission, but nonetheless reiterated that the Custodian should be required to disclose the requested leave information.

While the GRC agrees that the Custodian was required to disclose this information, it acknowledged that same was provided to the Custodian through the SOI statement. This disclosure certainly represents a change in the Custodian's position, which resulted from the filing of this complaint. Thus, the Complainant has prevailed and is entitled to prevailing party 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. 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. 51. Specifically, the Custodian certified in the SOI that Sgt. Cadigan was on paid leave for the duration of the time frame identified in the subject OPRA request. 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. 432, and Mason, 196 N.J. 51. **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.**

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 OPRA request for the "payroll record" identifying the type of leave taken by Sgt. Cadigan during the identified time frame was invalid. N.J.S.A. 47:1A-6; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012).
2. The Custodian unlawfully denied access to information regarding Sgt. Cadigan's leave status for the time frame identified in the subject OPRA request. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-10; Jackson v. Kean Univ., GRC Complaint No. 2002-98 (February 2004). However, the GRC declines to order any further disclosure because the Custodian acknowledged that Sgt. Cadigan was on paid leave during the identified time period and Complainant's Counsel has acknowledged this disclosure.
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, 71 (2008). Specifically, the Custodian certified in the Statement of Information that Sgt. Cadigan was on paid leave for the duration of the time frame identified in the subject OPRA request. 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. 432, and Mason, 196 N.J. 51. **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: Frank F. Caruso
Executive Director

August 20, 2024