



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lieutenant Governor

JACQUELYN A. SUÁREZ
Commissioner

FINAL DECISION

July 30, 2024 Government Records Council Meeting

Rotimi Owoh, Esq. (o/b/o African American
Data & Research Institute)
Complainant

Complaint No. 2022-70

v.

Ringwood Police Department (Passaic)
Custodian of Record

At the July 30, 2024 public meeting, the Government Records Council (“Council”) considered the July 23, 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’s March 7, 2022, response was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Specifically, the Custodian failed to indicate whether responsive agreements existed between the Borough of Ringwood and any separated police officer.
2. The Custodian performed an insufficient search for the portion of the Complainant’s OPRA request seeking agreements containing the reasons for separation. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the GRC declines to order disclosure of the additional records since the evidence demonstrates that the Custodian provided copies to the Complainant on May 20, 2022, and July 1, 2024.
3. The Custodian unlawfully denied access to the portion of the Complainant’s February 22, 2022 OPRA request seeking disclosable personnel information of separated police officers from 2014 to the present. N.J.S.A. 47:1A-6. Specifically, the Custodian created a spreadsheet by extracting the information from physical records, rather than providing the most comprehensive record containing the requested information. See Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008). Thus, the Custodian shall locate and provide such records to the Complainant.

4. **The Custodian shall comply with conclusion No. 3 above within twenty (20) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

5. 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 located responsive records after the instant complaint was filed upon conducting an additional search. The Custodian also improperly provided a spreadsheet containing requested information instead of providing the actual records. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney’s fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the
Government Records Council
On The 30th Day of July 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 1, 2024

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 30, 2024 Council Meeting**

**Rotimi Owoh, Esq. (on Behalf of African American
Data & Research Institute)¹
Complainant**

GRC Complaint No. 2022-70

v.

**Ringwood Police Department (Passaic)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of: Names, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension of individuals who either resigned or retired or terminated or otherwise separated from 2014 to the present. N.J.S.A. 47:1A-10.

- a. This request includes any agreement entered with each one of the separated police officer(s).
- b. When stating the reason for separation, please note that some police officers separate due to plea deal, criminal convictions, criminal charges, sentences, and or other court agreement or court proceedings that require officers to be separated from your police department and or law enforcement jobs.
- c. Some police officers separate due to internal affairs investigations within the police departments.

Custodian of Record: Nicole Langenmayr
Request Received by Custodian: February 22, 2022
Response Made by Custodian: March 7, 2022
GRC Complaint Received: March 28, 2022

Background³

Request and Response:

On February 22, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On March 7, 2022, Megan Sabric responded on the Custodian’s behalf in writing via e-mail providing a spreadsheet containing the requested personnel information.

¹ The Complainant represents African American Data & Research Institute.

² Represented by Richard J. Clemack, Esq. (Ringwood, 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.

Rotimi Owoh, Esq. (on Behalf of African American Data & Research) v. Ringwood Police Department (Passaic), 2022-70 – Findings and Recommendations of the Executive Director

Denial of Access Complaint:

On March 28, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the records did not provide the reasons for separation. The Complainant also asserted that creating a new spreadsheet or list stating “terminated” or “resigned” or “retired” is not sufficient. The Complainant also stated that the response did not state whether any officers left due to a plea deal or court proceeding that precludes them from law enforcement positions.

The Complainant requested the GRC to order the Custodian to comply with the Supreme Court decision Libertarians for Transparent Gov't v. Cumberland Cnty., 250 N.J. 46 (2022), issued on March 7, 2022. The Complainant also requested the GRC award counsel fees.⁴

Statement of Information:

On May 20, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on February 22, 2022. The Custodian certified that Ms. Sabric responded on her behalf on March 7, 2022, providing a spreadsheet containing the requested information.

The Custodian further certified that she did not provide a reason for one of the officers’ separations because she understood at the time the officer did not provide one. The Custodian certified that in his resignation letter, the officer stated he wished “to do what was best for [his] family, and move on to [his] next challenge.” The Custodian attached a copy of the resignation letter to the SOI.

Custodian’s Counsel argued further that the officer’s language was so broad and vague that the Custodian concluded it was unnecessary to expand on the officer’s “reason” for separation.

Additional Submissions:

On June 3, 2022, the Complainant submitted a brief in response to the Complainant’s SOI. The Complainant noted the recent decisions in Libertarians, 250 N.J. 46, and Rivera v. Union Cnty. Prosecutor’s Office, 250 N.J. 124 (2022) supported his position that he was entitled to records showing the real reasons for separations. The Complainant also referenced African Am. Data & Research Inst. v. Profitt, 2022 N.J. Super. Unpub. LEXIS 622 (App. Div. 2022) and African Am. Data & Research Inst. “aadari” v. Franchetta, 2022 N.J. Super. Unpub. LEXIS 879 (App. Div. 2022) to affirm his position that he does not have to accept lists, spreadsheets, or certifications stating “resigned”, “terminated”, or “retired.”

The Complainant initially argued that the terms “terminated”, “retired”, or “resigned,” did

⁴ 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 African American Data & Research) v. Ringwood Police Department (Passaic), 2022-70 – Findings and Recommendations of the Executive Director

not sufficiently provide the “reason for separation” because they were merely types of employment separations and did not adequately describe the underlying basis thereof. The Complainant argued that the “reason” for separation was likely located within a separate document constituting a government record, and the Custodian was obligated to retrieve that record, rather than create a spreadsheet or list containing the words “terminated”, “retired”, or “resigned.”

The Complainant next 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.

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). 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 the Borough of Ringwood (“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 officers pleaded guilty to criminal charges and as part of the agreement and sentencing they were required to be separated from the department.

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

On June 26, 2024, the GRC submitted a request for additional information to the Custodian. Specifically, the GRC first inquired whether the Custodian conducted a search for responsive settlement agreements, and if not to conduct said search. The GRC also inquired whether the information from the provided spreadsheet was collected from an electronic database, and whether the spreadsheet was created via Excel.

On July 1, 2024, the Custodian responded to the GRC’s request for additional information. The Custodian initially certified that the request was sent to the Borough’s Finance Department and Ms. Sabric responded directly to the request. The Custodian certified that upon review, the Borough conducted an incomplete search. The Custodian certified that since receiving the GRC’s request for additional information, she conducted an additional search which located several

agreements between the Borough and former Police Chiefs. The Custodian certified that copies of those agreements were produced to the Complainant.

The Custodian next certified that the personnel information was not collected from an electronic database, but instead retrieved via letters of approval from the Pension Board. The Custodian certified that the spreadsheet was thereafter created in Excel.

Analysis

Sufficiency of Response

OPRA provides that if a “custodian is unable to comply with a request for access, the custodian *shall indicate the specific basis therefor . . .* on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5(g) (emphasis added). In Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that “. . . [t]he Custodian’s response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).” See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Upon review, the GRC is satisfied that the Custodian provided an insufficient response. Here, Ms. Sabric responded to the Complainant’s OPRA request providing a spreadsheet containing the requested personnel information. However, Ms. Sabric’s response did not indicate whether any “agreement” existed between the Borough and the officers. It was not until the Custodian certified in the SOI that the records contained in the correspondence were responsive to the request for personnel information under N.J.S.A. 47:1A-10. Further, it was not until responding to the GRC’s request for additional information that the Custodian certified that a search for agreements was conducted at the time of the request, no records were initially located. The facts here are on point with those in Paff; thus, it follows there was an insufficient response in the instant complaint.

Therefore, the Custodian’s March 7, 2022, response was insufficient because she failed to address each request item. N.J.S.A. 47:1A-5(g); see Paff, GRC 2007-272; Lenchitz, GRC 2012-265. Specifically, the Custodian failed to indicate whether responsive agreements existed between the Borough and any separated police officer.

Sufficiency of Search

It is the custodian’s responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian’s response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive to the complainant’s OPRA request existed. The custodian certified that after receipt of the complainant’s denial of access complaint, which contained e-mails responsive to the complainant’s request, the custodian conducted a second search and found records responsive to the complainant’s request. The GRC held that the custodian had performed an inadequate search

and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

In the instant matter, the Custodian initially responded providing a spreadsheet containing the requested personnel information and no settlements or agreements containing the reasons for separations. However, in response to the GRC's request for additional information, the Custodian certified that the initial search was insufficient, and several responsive agreements were located after conducting an additional search. Therefore, the Custodian's initial search was incomplete since a subsequent search yielded responsive records. Schneble, GRC 2007-220.

Accordingly, the Custodian performed an insufficient search for the portion of the Complainant's OPRA request seeking agreements containing the reasons for separation. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. However, the GRC declines to order disclosure of the additional records since the evidence demonstrates that the Custodian provided copies to the Complainant on May 20, 2022, and July 1, 2024.

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.

Personnel Information

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").

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 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 [agency] 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).

However, 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. See Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012). In Valdes, the complainant sought the same personnel information at issue in the instant case. The custodian denied access since the requestor sought only information and did not identify a specific record that may contain the requested information. The Council held that OPRA did not require the custodian to extract and synthesize requested information from government records, but instead to provide the most comprehensive record containing said information, with necessary redactions. See also Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008).

In the instant matter, the Complainant requested Section 10 information from the Custodian. In response, the Custodian provided a spreadsheet with the requested information. However, while such information could be provided if originating from an electronic database, the Custodian certified in response to the GRC's request for additional information that the data came from physical personnel records and was collated into a spreadsheet. Thus, in accordance with Valdes and Morgano, the Custodian was obligated to instead provide the most comprehensive records containing Section 10 information, with redactions applied as necessary.

Accordingly, the Custodian unlawfully denied access to the portion of the Complainant's February 22, 2022 OPRA request seeking disclosable personnel information of separated police officers from 2014 to the present. N.J.S.A. 47:1A-6. Specifically, the Custodian created a spreadsheet by extracting the information from physical documents, rather than providing the most comprehensive records containing the requested information. See Valdes, GRC 2011-64; Morgano, GRC 2007-156. Thus, the Custodian shall locate and provide such records to the Complainant.

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 sought in part the “[n]ames, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension of individuals who either resigned or retired or terminated or otherwise separated from 2014 to the present.” The Custodian initially responded by providing a spreadsheet containing the requested personnel information. The Complainant then filed the instant complaint on March 28, 2022, asserting the Custodian failed to provide the “real reason” for the officers’ separations. The Complainant also asserted that the Custodian did not provide the requested information via actual records but instead provided a created spreadsheet.

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 Custodian provided an insufficient response and search regarding the request item seeking agreements containing the reasons for a police officer’s resignation. After receiving the instant complaint, the Custodian conducted an additional search and located responsive agreements. Furthermore, the Custodian certified that the information contained in the spreadsheet was collected from physical files, rather than an electronic database, and must therefore provide the actual records containing the information. 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.⁵

Therefore, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters, 387 N.J. Super. at 432. Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the Custodian located responsive records after the instant complaint was filed upon conducting an additional search. The Custodian also improperly provided a spreadsheet containing requested information instead of providing the actual records. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney’s fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s March 7, 2022, response was insufficient because she failed to address

⁵ 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 African American Data & Research) v. Ringwood Police Department (Passaic), 2022-70 – Findings and Recommendations of the Executive Director

- each request item. N.J.S.A. 47:1A-5(g); see Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008); Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013). Specifically, the Custodian failed to indicate whether responsive agreements existed between the Borough of Ringwood and any separated police officer.
2. The Custodian performed an insufficient search for the portion of the Complainant's OPRA request seeking agreements containing the reasons for separation. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). However, the GRC declines to order disclosure of the additional records since the evidence demonstrates that the Custodian provided copies to the Complainant on May 20, 2022, and July 1, 2024.
 3. The Custodian unlawfully denied access to the portion of the Complainant's February 22, 2022 OPRA request seeking disclosable personnel information of separated police officers from 2014 to the present. N.J.S.A. 47:1A-6. Specifically, the Custodian created a spreadsheet by extracting the information from physical records, rather than providing the most comprehensive record containing the requested information. See Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012); Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008). Thus, the Custodian shall locate and provide such records to the Complainant.
 4. **The Custodian shall comply with conclusion No. 3 above within twenty (20) business days from receipt of the Council's Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**
 5. 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 located responsive records after the instant complaint was filed upon conducting an additional search. The Custodian also improperly provided a spreadsheet containing requested information instead of providing the actual records. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

Prepared By: Samuel A. Rosado
Staff Attorney

July 23, 2024