



## 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

#### August 27, 2024 Government Records Council Meeting

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

Complaint No. 2022-81

v.

Ewing Police Department (Mercer)  
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 borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking any “agreement[s]” between the Township of Ewing and separated police officers. Specifically, the Custodian certified, and the record reflects, that no such records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian unlawfully denied access to the portion of the Complainant’s January 25, 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.
3. **The Custodian shall comply with conclusion No. 2 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).**
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 improperly provided a spreadsheet containing the requested information, rather than the actual records containing same. 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 27<sup>th</sup> 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**

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

**GRC Complaint No. 2022-81**

v.

**Ewing Police Department (Mercer)<sup>2</sup>  
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:** Kim Marcellaro

**Request Received by Custodian:** January 25, 2022

**Response Made by Custodian:** January 27, 2022; February 3, 2022

**GRC Complaint Received:** March 28, 2022

**Background<sup>3</sup>**

**Request and Response:**

On January 25, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 27, 2022, the Custodian responded to the Complainant in writing seeking clarification. Specifically, the Custodian inquired whether the Complainant sought personnel information from just police officers, or from all

---

<sup>1</sup> The Complainant represents African American Data & Research Institute.

<sup>2</sup> Represented by Michael A. Cedrone, Esq., of Stevens & Lee, P.C. (Lawrenceville, NJ).

<sup>3</sup> 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. Ewing Police Department (Mercer), 2022-81 – Findings and Recommendations of the Executive Director

separated employees from the Township of Ewing (“Township”). The Custodian also requested the Complainant describe the type of agreements sought. That same day, the Complainant responded to the Custodian stating that he sought only personnel information of police officers.

On January 28, 2022, the Custodian responded to the Complainant again seeking clarification on the requested agreements. The Complainant responded that same day refusing to clarify, stating that other police departments had no issue with responding to the request.

On February 3, 2022, the Custodian responded to the Complainant in writing, providing the requested personnel information via a spreadsheet. The Custodian also stated that no responsive records exist for subparts a, b, and c, of the request.

#### 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.<sup>4</sup>

#### Statement of Information:

On May 19, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 25, 2022. The Custodian certified that she forwarded the request to the Ewing Police Department (“EPD”), the Human Resources Department, and the Finance Department. The Custodian certified that representatives from those departments stated they did not maintain a repository of the requested information, and needed to conduct a search of their personnel files to determine whether certain documents contained the requested information. The Custodian then certified that the Chief Financial Officer advised that she could provide the requested information from payroll records. The Custodian certified that she responded on February 3, 2022, providing a spreadsheet containing the requested information.

The Custodian maintained that she provided a full response to the Complainant’s request and maintained that no responsive agreements exist. The Custodian asserted that Libertarians was not applicable in the instant matter because the Township did not deny access to responsive

---

<sup>4</sup> 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. Ewing Police Department (Mercer), 2022-81 – Findings and Recommendations of the Executive Director

agreements but asserted that no responsive agreements exist. The Custodian further maintained that custodians were not obligated to conduct a wide record by record search of each personnel file to locate a document that may contain the reasons why an employee separated from the Township.

The Custodian then asserted that, notwithstanding the above, the Township engaged in a good faith review of its personnel files and located three (3) letters of resignation from separated police officers. The Custodian asserted that copies of those letters were provided as part of the SOI but contended that had AADARI contacted the Township Clerk's Office, these records would have been provided.

The Custodian argued that instead of reaching out to the Clerk's Office, AADARI elected to immediately file a complaint with the GRC. The Custodian noted that in Grieco v. Borough of Haddon Heights, 449 N.J. Super. 513 (Law Div. 2015), the court declined to award the plaintiff attorney's fees when the records were not provided due to human error and the plaintiff refused to cooperate with the custodian. The Custodian contended that the fee-shifting provision should not be used as a tool to punish custodians who in good faith provided all available responsive records at the time of the request.

#### 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 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 Township 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.

### **Analysis**

#### **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.

#### **Agreements**

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005). Here, in addition to the requested personnel information, the Complainant sought any “agreement” between the Township and any separated officer containing the “reason for separation.” On February 3, 2022, the Custodian responded to the Complainant stating that no responsive records exist to that portion of the request. Additionally, the Custodian certified and maintained in the SOI that the Township did not possess any responsive agreements. Furthermore, the Complainant failed to present any evidence that the Township possessed same at the time of the request.

Accordingly, the Custodian has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking any “agreement[s]” between the Township and separated police officers. Specifically, the Custodian certified, and the record reflects, that no such records exist. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

## 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 in part Section 10 information from the Custodian. In response, the Custodian provided a spreadsheet containing the requested information. However, while such information could be provided in that format if originating from an electronic database, the Custodian certified that neither EPD, Human Resources Department, nor the Finance Department maintained a repository of personnel information. The Custodian certified that the data instead came from existing payroll records. 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 January 25, 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 (7<sup>th</sup> 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 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 certified that the information contained in the spreadsheet was collected from personnel records, rather than an electronic database. The Custodian is therefore obligated to locate and provide the actual records containing the requested personnel 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.<sup>5</sup>

---

<sup>5</sup> 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. Ewing Police Department (Mercer), 2022-81 – Findings and Recommendations of the Executive Director

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 improperly provided a spreadsheet containing the requested information, rather than the actual records containing same. 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 has borne her burden of proof that she lawfully denied access to the Complainant’s OPRA request seeking any “agreement[s]” between the Township of Ewing and separated police officers. Specifically, the Custodian certified, and the record reflects, that no such records exist. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian unlawfully denied access to the portion of the Complainant’s January 25, 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.
3. **The Custodian shall comply with conclusion No. 2 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).**
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 improperly provided a spreadsheet containing the requested information, rather than the actual records containing same.

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

August 20, 2024