



## 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

#### May 21, 2024 Government Records Council Meeting

Richard J. Labinski, Jr.  
Complainant

Complaint No. 2022-90

v.

Clayton Police Department (Gloucester)  
Custodian of Record

At the May 21, 2024 public meeting, the Government Records Council (“Council”) considered the May 14, 2024 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian lawfully denied access to the records relevant to the complaint because said records are exempt from access as confidential records pursuant to N.J.S.A. 2C:25-33, applicable to OPRA by operation of N.J.S.A. 47:1A-9(a), and the Complainant is not the victim. N.J.S.A. 47:1A-6; VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014). Because the records are exempt under The Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17, et seq., the GRC need not address whether the records are also exempt as criminal investigatory records.
2. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian’s conduct. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, no 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 (2008). Specifically, the Custodian certified that the requested records are exempt from access pursuant to The Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17, et seq., and the Complainant failed to submit any evidence to refute the Custodian’s certification. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76.

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 21<sup>st</sup> Day of May 2024

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: May 23, 2024**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Richard J. Labinski, Jr.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2022-90**

v.

**Clayton Police Department (Gloucester)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies for pick-up of:<sup>3</sup>

3. “[A] report/receipt of when an officer was dispatched out to the residence of [a specific street number] W. Chestnut St. in the Borough of Clayton, N.J. on the morning of March 28, 2021, [t]o pick up a handgun that the residence (sic) stated was not surrendered to the police the night before, as per temporary restraining order issued. FV-08-001102-21. Please contact me with any cost that is involved.”
4. “[A] clear and legible copy on a C.D. Of (sic) the recording from the Body-Worn camera of Clayton Police officer Foley. When he was called out to investigate the report of a domestic violence issue on the date of March 27, 2021 to the residence of [a specific street number] W. Chestnut St. in the Borough of Clayton, N.J. (sic) Please contact me with any cost that is involved .”
5. “[A] clear and legible copy on a C.D. Of (sic) the recording from the Body-Worn camera of Clayton Police officer Guglielmo. When she was called out to investigate the report of a domestic violence issue on the date of March 27, 2021 to the residence of [a specific street number] W. Chestnut St. in the Borough of Clayton, N.J. (sic) Please contact me with any cost that is involved.”<sup>4</sup>

**Custodian of Record:** Andrew Davis  
**Request Received by Custodian:** February 1, 2022  
**Response Made by Custodian:** February 10, 2022  
**GRC Complaint Received:** April 6, 2022

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<sup>1</sup> No legal representation listed on record. Previously represented by Andrew N. Yurick, Esq., Law Offices of Andrew N. Yurick (Woodbury, NJ). Mr. Yurick e-mailed the GRC on May 17, 2024 stating that he is not representing the Complainant, who is proceeding *pro se*.

<sup>2</sup> Represented by co-counsel Timothy D. Scaffidi, Esq., Law Office of Timothy D. Scaffidi (Woodbury, NJ), and Gary M. Marek, Esq., Law Offices of Gary M. Marek (Mt. Laurel, NJ).

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

<sup>4</sup> The request items are numbered in accord with the item numbers assigned in the complaint and as referenced within the Statement of Information.

## Background<sup>5</sup>

### Request and Response:

On February 1, 2022, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On February 10, 2022, the seventh (7<sup>th</sup>) business day following receipt of said request, the Custodian responded in writing to the Complainant’s OPRA request. The Custodian denied request item number 3 as a criminal investigatory record. The Custodian also denied request items numbered 4 and 5 as domestic violence records.

### Denial of Access Complaint:

On April 6, 2022, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that the Custodian denied his request items numbered 3, 4 and 5. The Complainant attached the Custodian’s response to the complaint.

### Statement of Information:

On April 26, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on February 1, 2022, and responded to the request on February 10, 2022. The Custodian certified that the Complainant limited his allegations of an unlawful denial to request items numbered 3, 4 and 5.

The Custodian certified that with respect to request item number 3, one (1) record was determined to be responsive. The Custodian certified that the responsive record is police incident report number 21-004251, and he denied it as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1. The Custodian cited N. Jersey Media Grp., Inc. v. Twp. Of Lyndhurst, 229 N.J. 541 (2017), and Paff v. Ocean Cnty. Prosecutor’s Office, 235 N.J. 1 (2018) in support of his denial. The Custodian further certified that incident report number 21-004251, together with the records responsive to request items number 4 and 5, were also denied as records related to a domestic violence incident, exempt from access pursuant to N.J.S.A. 2C:25-33 and N.J.S.A. 2C:25-34.

The Custodian certified that, “[t]he Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17, et seq. (“DVA”), prohibits the release of domestic violence records absent a Court order specifically determining that such records may be necessary for determination of an issue before the Court.” The Custodian expounded upon sections 33 and 34 of the DVA. The Custodian certified that the former section specifically provides that “[a]ll records maintained pursuant to this act shall be confidential and shall not be made available to any individual or institution except as otherwise provided by law.” The Custodian certified that the latter section provides in relevant part that “[a]ll records made pursuant to this section shall be kept confidential and shall be released only to . . . [a] court, upon its finding that access to such records may be necessary for determination

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<sup>5</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.

of an issue before the court[.]” The Custodian certified that the Complainant was not the victim in the domestic violence incident and that the requested records are exempt from access under OPRA.

#### Additional Submissions:

By letter dated May 10, 2022, the Complainant’s Counsel replied to the SOI. Counsel asserted that the Complainant, as the defendant in a domestic violence matter, “has a right to see all discovery for any and all temporary restraining orders and complaints filed against him.” Counsel stated that it is not the intention of the Legislature to prohibit defendants in domestic violence matters from obtaining the police reports for the charges made against them. As such, Counsel argued that the requested records should be disclosed to the Complainant immediately.

On May 23, 2022, via e-mailed letter to the GRC, the Custodian’s Counsel stated that in his May 10, 2022 letter, the Complainant’s Counsel suggested that because the Complainant may be entitled to the requested records as a matter of criminal discovery, he should be entitled to the records under OPRA. Counsel stated that the requested records are exempt under OPRA. Counsel further stated that whether the records are subject to disclosure as a matter of discovery or under the common law is not an issue properly before the GRC.

### 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.

OPRA further provides that:

The provisions of this act . . . shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to [OPRA]; any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; or federal order.

[N.J.S.A. 47:1A-9(a)]

#### Request Item Numbers 3, 4 and 5

The DVA provides in relevant part that that “[a]ll records maintained pursuant to this act shall be confidential and shall not be made available to any individual or institution except as otherwise provided by law.” N.J.S.A. 2C:25-33.

Request item number 3 seeks a report/receipt for a handgun confiscated per a temporary restraining order issued under docket number FV-08-001102-21. The Custodian denied access to the responsive police report as a criminal investigatory record and a confidential DVA record.

Request item numbers 4 and 5 seek body worn camera recordings from the cameras of two (2) officers that were “called out to investigate the report of a domestic violence issue . . .” The Custodian denied access to the responsive recordings because he certified that they were exempt DVA records.

The Complainant’s Counsel argued that the requested records should have been provided to the Complainant because he has a right to discovery for all temporary restraining orders and complaints filed against him. Conversely, the Custodian’s Counsel asserted that the requested records are exempt under OPRA, and that whether the records are subject to disclosure as a matter of discovery is not within the purview of the GRC.

In VanBree v. Bridgewater Twp. Police Dep’t (Somerset), GRC Complaint No. 2014-122 (October 2014), the complainant, the defendant in a domestic violence matter, requested several police mobile video recordings. The custodian, in denying access, asserted that the requested records were exempt as criminal investigatory records and confidential records under the DVA. The Council confirmed that the responsive records related to a domestic violence incident and concluded that the custodian lawfully denied access to the records.

The facts in the instant complaint are on all-fours with the facts of VanBree, GRC 2014-122. Here, as in VanBree, the Complainant is the defendant in a domestic violence matter seeking recordings captured by police cameras during the investigation of a domestic violence incident.

The Complainant’s Counsel argued that the requested records should have been disclosed because the Complainant has a right to discovery for complaints filed against him; however, the GRC finds Counsel’s argument to be irrelevant. The GRC has no authority over discovery requests. Pursuant to N.J.S.A. 47:1A-7, the GRC’s authority to adjudicate requests for records is limited to OPRA requests.<sup>6</sup>

With respect to the OPRA request that formed the basis of the instant complaint, there is no question, by the very wording of the request, that the records relevant to the complaint are domestic violence records. For request item number 3, the Complainant sought a record under docket number FV-08-001102-21. The “FV” prefix designates a domestic violence case.<sup>7</sup> Request items number 4 and 5 seek records made during the investigation of a “domestic violence issue.” Furthermore, the Custodian identified records responsive to all three (3) request items as records exempt under the DVA. The GRC is satisfied that the requested records were part of a domestic violence incident and that N.J.S.A. 2C:25-33 applies here.

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<sup>6</sup> The Appellate Division lends persuasive authority to the GRC’s analysis in Cauthen v. N.J. Dep’t of Corr., 2024 N.J. Super. Unpub. LEXIS 506 (App. Div. 2024), finding that although the appellant “. . . was able to obtain similar information through a different avenue does not mean the [respondent] improperly denied his [OPRA] request.” Id.

<sup>7</sup> “Domestic violence cases are assigned to the FV docket.” [FV Or FO docket number | NJ Courts](#).

Therefore, the Custodian lawfully denied access to the records relevant to the complaint because said records are exempt from access as confidential records pursuant to N.J.S.A. 2C:25-33, applicable to OPRA by operation of N.J.S.A. 47:1A-9(a), and the Complainant is not the victim. N.J.S.A. 47:1A-6; VanBree, GRC 2014-122. Because the records are exempt under the DVA, the GRC need not address whether the records are also exempt as criminal investigatory records.

### **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 a domestic violence incident report and body worn camera recordings captured during the investigation of a domestic violence incident. In response, the Custodian denied access to the records as criminal investigatory and domestic violence records. The Complainant then filed the instant complaint on April 6, 2022, asserting the Custodian unlawfully denied his request items numbered 3, 4 and 5. However, the Custodian certified in the SOI that all of the records relevant to the complaint are confidential records pursuant to the DVA, and the Complainant failed to submit any competent, credible evidence to refute the Custodian’s certification. Thus, the Complainant has not achieved the desired result and is not a prevailing party in this complaint.

Therefore, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian’s conduct. Teeters, 387 N.J. Super. at 432. Additionally, no factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the Custodian certified that the requested records are exempt from access pursuant to the DVA, and the Complainant failed to submit any evidence to refute the Custodian’s certification. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76.



## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian lawfully denied access to the records relevant to the complaint because said records are exempt from access as confidential records pursuant to N.J.S.A. 2C:25-33, applicable to OPRA by operation of N.J.S.A. 47:1A-9(a), and the Complainant is not the victim. N.J.S.A. 47:1A-6; VanBree v. Bridgewater Twp. Police Dep't (Somerset), GRC Complaint No. 2014-122 (October 2014). Because the records are exempt under The Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17, et seq., the GRC need not address whether the records are also exempt as criminal investigatory records.
  
2. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, no 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 (2008). Specifically, the Custodian certified that the requested records are exempt from access pursuant to The Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17, et seq., and the Complainant failed to submit any evidence to refute the Custodian's certification. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76.

Prepared By: John E. Stewart

May 14, 2024