



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

Andrew H. Graulich, Esq.
Complainant

v.

City of Newark (Essex)
Custodian of Record

Complaint No. 2024-128

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’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(g). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s February 12, 2024 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to this OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame results in a “deemed” denial of said request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
3. The Complainant’s request seeking “[p]olice [d]epartment records” is invalid under prevailing case law. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012). Thus, notwithstanding the “deemed” denial, the Custodian lawfully denied access to the subject request because it was invalid. N.J.S.A. 47:1A-6.

4. 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, 71 (2008). Specifically, and notwithstanding the Custodian's technical violations of OPRA, the subject request is invalid. See Carter v. Franklin Fire Dist. No. 2 (Somerset), GRC Complaint No. 2012-101 (April 2013). 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. 432, and Mason, 196 N.J. 51.

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**

**Andrew H. Graulich, Esq.¹
Complainant**

GRC Complaint No. 2024-128

v.

**City of Newark (Essex)²
Custodial Agency**

Records Relevant to Complaint: “Police Department record, from 11/25/2023 to 11/25/2023 . . .”

Custodian of Record: Kecia Daniels
Request Received by Custodian: February 12, 2024
Response Made by Custodian: February 15, 2024
GRC Complaint Received: May 14, 2024

Background³

Request and Response:

On February 12, 2024, the Complainant⁴ submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Complainant noted that he represented a client who was assaulted at a local grocery store on the identified day and that the suspect’s phone was obtained, as well as other footage from phones and surveillance cameras. The Complainant noted that the police report of the incident was attached.

On February 15, 2024, Samora Noguera, Esq. responded in writing on behalf of the Custodian advising that an extension of time until April 23, 2024, was necessary “because of the nature of [the] request and volume of requests directed towards police.” On March 18, 2024, the Complainant sent a letter to Ms. Noguera seeking a status update on the subject OPRA request.

Denial of Access Complaint:

On May 14, 2024, the Complainant filed a Denial of Access Complaint with the

¹ Complainant represents Shawn J. Kirkley.

² No legal representation listed on record.

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.

⁴ The actual OPRA request was submitted by Leah Nelums, who appears to work for the Complainant’s law firm.

Government Records Council (“GRC”). The Complainant stated that the City of Newark (“City”) extended the response time frame through April 23, 2024. The Complainant did not provide any additional arguments or support for why he believed he was unlawfully denied access.

Statement of Information:

On May 20, 2024, the GRC sent the Custodian a request to file the Statement of Information (“SOI”) for both complaints. On June 13, 2024, the GRC sent a “No Defense” letter to the Custodian, requesting a completed SOI within three (3) business days of receipt. The GRC noted that the Custodian’s failure to submit an SOI could lead to an adjudication based solely on the Complainant’s submission. N.J.A.C. 5:105-2.4(f).⁵

Analysis

Preface

Initially, the GRC notes that a Denial of Access Complaint is not actionable when a complainant fails to provide any factual or legal basis alleging an unlawful denial of access to government records. In Loigman v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2013-342 (July 2014), the complainant’s denial of access complaint lacked any arguments or legal precedent in support of his complaint. The Council found that the custodian did not unlawfully deny access to the OPRA request, in part, because the complainant failed to advance any argument in support of his claim. See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2013-320 (July 2014); Collazo v. Passaic Cnty. Superintendent of Elections, GRC Complaint No. 2013-310 (July 2014).

Here, the Complainant submitted the instant complaint, including attachments that insinuate this complaint resulted from the City’s failure to respond in the extended time frame. However, the Complainant left the “Detail Summary” and “Records Denied List” blank. The GRC can infer from the attachments the basis for the complaint and will thus adjudicate same in due course. Notwithstanding the continuation of this adjudication, it bears noting that this complaint was perilously close to being ripe for dismissal as a failure to state a claim.

Failure to Submit SOI

In furtherance of the GRC’s obligation to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to government records[,]” pursuant to N.J.S.A. 47:1A-7(b), it requires a custodian to submit a completed SOI. See N.J.A.C. 5:105-2.4(a).

The New Jersey Administrative Code provides, in relevant part:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than 10 business days from the date of receipt of the SOI form from the Council's staff. Custodians must sign the SOI . . .

⁵ The GRC notes that it received a “Read” receipt from the Custodian confirming receipt of the initial SOI request.

Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

[N.J.A.C. 5:105-2.4(g).]

In Alterman, Esq. v. Sussex Cnty. Sheriff's Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus, the Council noted the custodian's failure to adhere to N.J.A.C. 5:105-2.4(a). See also Kovacs v. Irvington Police Dep't (Essex), GRC Complaint No. 2014-196 (January 2015); Howell v. Twp. of Greenwich (Warren), GRC Complaint No. 2015-249 (November 2016).

In the instant matter, the GRC sent an SOI request to the Custodian on May 20, 2024. On June 13, 2024, after the expiration of the ten (10) business day deadline, the GRC sent the Custodian a "No Defense" letter providing her an additional three (3) business days to submit the requested SOI. The transmission also included a copy of the original SOI letter providing detailed instructions on how to properly submit an SOI. The GRC never received a completed SOI from the Custodian.

Accordingly, the Custodian's failure to provide a completed SOI to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(g). Moreover, the Custodian's failure to respond obstructed the GRC in its efforts to "receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . ." N.J.S.A. 47:1A-7(b).

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian's failure to respond within the required seven (7) business days results in a "deemed" denial. Id. Further, a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁶ Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008), the custodian responded in writing on the fifth (5th) business day after receipt of the complainant's March 19, 2007 OPRA request seeking an extension of time until April 20, 2007. However, the custodian responded again on April 20, 2007, stating that the requested records would be provided later in the week. Id. The evidence of record showed that no records were provided until May 31, 2007. Id. The GRC held that:

⁶ A custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA. See N.J.S.A. 47:1A-5(i).

The Custodian properly requested an extension of time to provide the requested records to the Complainant by requesting such extension in writing within the statutorily mandated seven (7) business days pursuant to N.J.S.A. 47:1A-5(g) and N.J.S.A. 47:1A-5(i) . . . however . . . [b]ecause the Custodian failed to provide the Complainant access to the requested records by the extension date anticipated by the Custodian, the Custodian violated N.J.S.A. 47:1A-5(i) resulting in a “deemed” denial of access to the records.

[Id.]

In this matter, the Complainant submitted his OPRA request on February 12, 2024. The Custodian responded on February 15, 2024, extending the response time frame through April 23, 2024. This complaint followed on May 14, 2024, wherein the Complainant appeared to challenge the Custodian’s failure to respond within the extended time frame. The evidence of record (absent the SOI filing) indicates that the Custodian did fail to respond within the extended time frame. Thus, and like Kohn, GRC 2007-124, the Custodian’s failure to conform with the April 23, 2024 extended deadline results in a “deemed” denial of access.

Therefore, the Custodian did not bear her burden of proof that she timely responded to the Complainant’s February 12, 2024 OPRA request. See N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to this OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame results in a “deemed” denial of said request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, GRC 2007-11. See also Kohn, GRC 2007-124.

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 Alcoholic Beverage Control, 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. (emphasis added); see also Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁷ 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).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) and requires a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. See *e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See *e.g.* Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

Regarding generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-540. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. See also Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking “[a]ny and all documents and evidence” relating to an investigation being conducted by the Somerset County Prosecutor’s Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not

⁷ Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in [MAG], [Bent] and the Council's decisions in Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (February 2008).

[Id. See also Schulz v. NJ State Police, GRC Complaint No. 2014-390 (Interim Order dated July 28, 2015) (holding that the portion of the request seeking "all documents" was overly broad and thus invalid).]

Additionally, in Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015), the court held that plaintiff's request was invalid because it required research. In reaching this conclusion, the court reasoned that:

The custodian in this case would have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher.

[Id. at 237.]

Here, the Complainant's February 12, 2024 OPRA request sought in part "[p]olice [d]epartment records" identifying an incident on a specific day. The Complainant included as part of his OPRA request a police report of the incident. The Custodian, through Mr. Noguera, initially extended the response time frame but did not comply with same, as addressed above. Also as already addressed, the Custodian failed to submit an SOI.

However, upon review of request, the GRC is compelled to find that it was invalid because it seeks generic "records" and would require research that is not contemplated under OPRA. Lagerkvist, 443 N.J. Super. at 236-37; Feiler-Jampel, GRC 2007-190. Specifically, the Custodian would be required to research various documents to find "records" related to the incident. The GRC also does not find the qualifying information related to the suspect's phone, witness phones, and video surveillance to provide any additional value in clarifying the actual records sought. Nor is the GRC persuaded that the attached police report provides any further clarity as to those specific records sought by the Complainant. See Edwards, GRC 2008-183 *et seq.* Thus, it cannot be said that the request sought a limited scope of identifiable records.

Accordingly, Complainant's request seeking "[p]olice [d]epartment records" is invalid under prevailing case law. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; Lagerkvist, 443 N.J. Super. at 236-37; Feiler-Jampel, GRC 2007-190; Edwards, GRC 2008-183 *et seq.* Thus,

notwithstanding the “deemed” denial, the Custodian lawfully denied access to the subject request because it was invalid. N.J.S.A. 47:1A-6.

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.]

In this complaint, the Complainant appeared to dispute the Custodian's failure to respond within the extended time frame. The Custodian subsequently failed to submit an SOI. Armed with the evidence on the record, the GRC has found that the Custodian's failure to respond resulted in a “deemed” denial of access. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i). However, the request at issue here is invalid because it failed to identify specific records. Based on this, and notwithstanding the technical violation, the Complainant is not a prevailing party because the GRC has found that the subject request was invalid. See Carter v. Franklin Fire Dist. No. 2 (Somerset), GRC Complaint No. 2012-101 (April 2013) (holding that the GRC “did not order disclosure of any records and the Custodian's technical violation of OPRA did not represent a change in the Custodian's conduct.”)

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. 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. 51. Specifically, and notwithstanding the Custodian's technical violations of OPRA, the subject request is invalid. Carter, GRC 2012-101. 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. 432, and Mason, 196 N.J. 51.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian’s failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(g). Moreover, the Custodian’s failure to respond additionally obstructed the GRC in its efforts to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).
2. The Custodian did not bear her burden of proof that she timely responded to the Complainant’s February 12, 2024 OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to this OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the extended time frame results in a “deemed” denial of said request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007). See also Kohn v. Twp. of Livingston Library (Essex), GRC Complaint No. 2007-124 (March 2008).
3. The Complainant’s request seeking “[p]olice [d]epartment records” is invalid under prevailing case law. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183 *et seq.* (Final Decision dated April 25, 2012). Thus, notwithstanding the “deemed” denial, the Custodian lawfully denied access to the subject request because it was invalid. N.J.S.A. 47:1A-6.
4. 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, 71 (2008). Specifically, and notwithstanding the Custodian’s technical violations of OPRA, the subject request is invalid. See Carter v. Franklin Fire Dist. No. 2 (Somerset), GRC Complaint No. 2012-101 (April 2013). 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. 432, and Mason, 196 N.J. 51.

Prepared By: Frank F. Caruso
Executive Director

August 20, 2024