



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**PHILIP D. MURPHY**  
*Governor*

**LT. GOVERNOR SHEILA Y. OLIVER**  
*Commissioner*

**FINAL DECISION**

**May 18, 2021 Government Records Council Meeting**

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

Complaint No. 2018-155

v.

Freehold Township Police Department (Monmouth)  
Custodian of Record

At the May 18, 2021 public meeting, the Government Records Council (“Council”) considered the May 11, 2021 Supplemental 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 the Council dismiss the complaint because the Complainant withdrew it on December 23, 2020, noting that the parties reached a settlement. Therefore, no further adjudication is required.

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 18<sup>th</sup> Day of May 2021

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 20, 2021**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
May 18, 2021 Council Meeting**

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

**GRC Complaint No. 2018-155**

v.

**Freehold Township Police Department (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:<sup>3</sup>

1. Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) complaints and summonses that were prepared and filed by the Freehold Township Police Department (“FPD”) from January 2016 through present.
2. Drug possession complaints prepared and filed by the FPD from January 2016 through present.
3. Drug paraphernalia complaints prepared by the FPD from January 2016 through present.

**Custodian of Record:** James Lasky, III<sup>4</sup>  
**Request Received by Custodian:** July 23, 2018  
**Response Made by Custodian:** July 24, 2018  
**GRC Complaint Received:** July 30, 2018

**Background**

**September 29, 2020 Council Meeting:**

At its September 29, 2020 public meeting, the Council considered the September 22, 2020 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, found that:

1. The current Custodian complied with the Council’s July 28, 2020 Interim Order because he responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

---

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

<sup>2</sup> Represented by Andrew J. Ball, Esq. of Davison, Eastman, Muñoz, Lederman & Paone, P.A. (Freehold, N.J.).

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

<sup>4</sup> The current Custodian of Record is Kenneth Kleinman.

2. The Custodian imposed an unwarranted special service charge. N.J.S.A. 47:1A-5(c). However, the current Custodian cured the error by providing responsive records without charge to the Complainant in accordance with the Council's July 28, 2020 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. Because of the limited factual record, this complaint should be referred to the Office of Administrative Law for a fact-finding hearing to determine the relationship between the Complainant and alleged client African American Data and Research Institute based on the standard set forth in Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517 (App. Div. 2011). See Owoh, Esq. (O.B.O. AADARI) v. Neptune Police Dep't (Monmouth), GRC Complaint No. 2018-153 (April 2020). Additionally, the OAL should also determine whether AADARI, the organization the Complainant purportedly represents, is legitimate. Should the OAL ultimately find that AADARI is legitimate and that the Complainant is legally representing them, the OAL shall determine whether the Complainant is a prevailing party and if so, the reasonable fee amount.

#### Procedural History:

On September 30, 2020, the Council distributed its Interim Order to all parties. On November 19, 2020, the complaint was transmitted to the Office of Administrative Law ("OAL"). On December 23, 2020, the Complainant submitted a letter via e-mail to the OAL requesting dismissal of the matter, stating that the parties have settled the outstanding issues. On May 4, 2021, the OAL returned the complaint back to the Government Records Council marked "WITHDRAWAL."

#### Analysis

No analysis required.

#### Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss the complaint because the Complainant withdrew it on December 23, 2020, noting that the parties reached a settlement. Therefore, no further adjudication is required.

Prepared By: Samuel A. Rosado  
Staff Attorney

May 11, 2021



**State of New Jersey**  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**PHILIP D. MURPHY**  
*Governor*

**LT. GOVERNOR SHEILA Y. OLIVER**  
*Commissioner*

**INTERIM ORDER**

**September 29, 2020 Government Records Council Meeting**

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

Complaint No. 2018-155

Complainant

v.

Freehold Township Police Department (Monmouth)  
Custodian of Record

At the September 29, 2020 public meeting, the Government Records Council (“Council”) considered the September 22, 2020 Supplemental 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 current Custodian complied with the Council’s July 28, 2020 Interim Order because he responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian imposed an unwarranted special service charge. N.J.S.A. 47:1A-5(c). However, the current Custodian cured the error by providing responsive records without charge to the Complainant in accordance with the Council’s July 28, 2020 Interim Order. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. Because of the limited factual record, this complaint should be referred to the Office of Administrative Law for a fact-finding hearing to determine the relationship between the Complainant and alleged client African American Data and Research Institute based on the standard set forth in Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517 (App. Div. 2011). See Owoh, Esq. (O.B.O. AADARI) v. Neptune Police Dep’t (Monmouth), GRC Complaint No. 2018-153 (April 2020). Additionally, the OAL should also determine whether AADARI, the organization the Complainant purportedly represents, is legitimate. Should the OAL ultimately find that AADARI is legitimate and that the Complainant is legally representing them, the OAL shall determine whether the Complainant is a prevailing party and if so, the reasonable fee amount.

Interim Order Rendered by the  
Government Records Council  
On The 29<sup>th</sup> Day of September 2020

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: September 30, 2020**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
September 29, 2020 Council Meeting**

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

**GRC Complaint No. 2018-155**

v.

**Freehold Township Police Department (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:<sup>3</sup>

1. Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) complaints and summonses that were prepared and filed by the Freehold Township Police Department (“FPD”) from January 2016 through present.
2. Drug possession complaints prepared and filed by the FPD from January 2016 through present.
3. Drug paraphernalia complaints prepared by the FPD from January 2016 through present.

**Custodian of Record:** James Lasky, III<sup>4</sup>  
**Request Received by Custodian:** July 23, 2018  
**Response Made by Custodian:** July 24, 2018  
**GRC Complaint Received:** July 30, 2018

**Background**

July 28, 2020 Council Meeting:

At its July 28, 2020 public meeting, the Council considered the July 21, 2020 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, found that:

1. The Custodian lawfully denied access to the Complainant’s July 23, 2018 OPRA request Item Nos. 2 and 3. N.J.S.A. 46:1A-6. Specifically, the Custodian certified, and the record reflects, that Freehold Police Department does not possess or maintain the

---

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

<sup>2</sup> Represented by Andrew J. Ball, Esq. of Davison, Eastman, Muñoz, Lederman & Paone, P.A. (Freehold, N.J.).

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

<sup>4</sup> The current Custodian of Record is Kenneth Kleinman.

requested complaints. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

2. The Custodian has not borne her burden of proof that a special service charge is warranted pertaining to the Complainant's July 23, 2018 OPRA request Item No. 1. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that 3.75 hours represents an "extraordinary amount of time and effort" to prepare and disclose 147 pages of records. See N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002); Rivera v. Borough of Fort Lee Police Dep't (Bergen), GRC Complaint No. 2009-285 (Interim Order dated May 24, 2011). However, the current Custodian may charge the actual copy associated with producing the records. See Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). Thus, the current Custodian shall grant access to the requested records, with redactions where applicable, once the Complainant remitted payment of same. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
3. **The current Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>5</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>6</sup> to the Executive Director.<sup>7</sup>**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

#### Procedural History:

On July 29, 2020, the Council distributed its Interim Order to all parties. On August 5, 2020, the current Custodian responded to the Council's Interim Order, providing a certified confirmation of compliance to the Executive Director. Therein, the current Custodian certified that responsive records were provided to the Complainant via e-mail on August 5, 2020 and attached an e-mail from the Complainant confirming receipt. The current Custodian also certified that

---

<sup>5</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>6</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>7</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

redactions of driver's license numbers, unlisted telephone numbers, and dates of birth were made to responsive records pursuant to N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-1.1.

## Analysis

### Compliance

At its July 28, 2020 meeting, the Council ordered the current Custodian to produce responsive records to the Complainant upon receipt of payment for the actual costs, if any, associated with production of same. The Council also ordered the current Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rule, R. 1:4-4, to the Executive Director. On July 29, 2020, the Council distributed its Interim Order to all parties, providing the current Custodian five (5) business days to comply with the terms of said Order. Thus, the current Custodian's response was due by close of business on August 5, 2020.

On August 5, 2020, the fifth (5<sup>th</sup>) business day after receipt of the Council's Order, the current Custodian provided responsive records with redactions to the Complainant via e-mail and provided the GRC with evidence of the Complainant's receipt of same. The current Custodian also provided a certified confirmation of compliance to the Executive Director.

Therefore, the current Custodian complied with the Council's July 28, 2020 Interim Order because he responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

### Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty . . ." N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states ". . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . ." N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (*id.*; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate,



with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the instant matter, the Custodian imposed an unwarranted special service charge. N.J.S.A. 47:1A-5(c). However, the current Custodian cured the error by providing responsive records without charge to the Complainant in accordance with the Council's July 28, 2020 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

### **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.]

However, the GRC and New Jersey Courts have held differently on this issue where a complainant is representing themselves. According to the New Jersey Supreme Court, the New Jersey Legislature has promulgated a "substantial number of statutes authorizing an award of a reasonable counsel fee *to the attorney for the prevailing party.*" (emphasis added) New Jerseyans For A Death Penalty Moratorium v. N.J. Dep't of Corr. and Devon Brown, 182 N.J. 628 (2005) (decision without a published opinion) (quoting Rendine v. Pantzer, 141 N.J. 292 (1995)). Although the underlying purpose of those statutes may vary, they share a common rationale for incorporating a fee-shifting measure: to ensure "that plaintiffs with bona fide claims are able to find lawyers to represent them[,] . . . to attract competent counsel in cases involving statutory rights, . . . and to ensure justice for all citizens." New Jerseyans (quoting Coleman v. Fiore Bros., 113 N.J. 594, 598 (1989)). Thus, the courts of the State have determined that the state's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff, not an attorney who is the plaintiff representing himself. See also Feld v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 903 (App. Div. 2019).

OPRA provides that a person who is denied access to a government record may either file a proceeding in Superior Court or file action with the GRC. N.J.S.A. 47:1A-6. In Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006), the requestor was an attorney requesting records and did not identify that he was representing a client. The Council held that "[b]ased on the fact that the courts of the state have determined that the state's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff *not an attorney who is the plaintiff representing himself*, the Complainant is not entitled to reasonable attorney's fees

pursuant to OPRA.” (Emphasis added.) See also Pitts v. N.J. Dep’t of Corrections, GRC Complaint No. 2005-71 (April 2006).

In the instant matter, the Custodian’s Counsel asserted in the Statement of Information (“SOI”) that notwithstanding the Complainant captioning the complaint as “on behalf of [African American Data & Research Institute (“AADARI”)],” he submitted the OPRA request at issue under the name, “The Law Office of Rotimi Owoh.” Custodian’s Counsel also asserted that the Complainant personally signed the OPRA request and complaint. Custodian’s Counsel argued that the Complainant was therefore an attorney representing himself and not entitled to an award of attorney’s fees as a prevailing party pursuant to Boggia, GRC 2005-36. The Complainant did not respond to the Custodian’s Counsel’s arguments.

In addition to the Custodian’s Counsel’s SOI arguments, the Administrative Procedures Act provides that the Office of Administrative Law (“OAL”) “shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the [OAL] . . .” N.J.A.C. 1:1-3.2(a).

Further, N.J.A.C. 1:1-15.2(a) and (b) state that official notice may be taken of judicially noticeable facts (as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence), as well as of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. See Sanders v. Div. of Motor Vehicles, 131 N.J. Super. 95 (App. Div. 1974). Accordingly, the GRC takes judicial notice of the issues and arguments raised by the custodian in Owoh, Esq. (O.B.O. AADARI) v. Neptune Police Dep’t (Monmouth), GRC Complaint No. 2018-153 (April 2020).

In Neptune, the custodian argued that AADARI did not exist “as a matter of law” at the time of the OPRA request, with the organization obtaining its Certificate of Formation several months after filing its complaint against Neptune City. Thus, the custodian argued that the Complainant should be deemed the actual requestor, and therefore not entitled to a fee award. See Segal v. Lynch, 211 N.J. 230 (2012); Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn, 410 N.J. Super. 510, 545 (App. Div.), certif. denied, 203 N.J. 93 (2010); and Boggia, GRC 2005-36.

The custodian further argued that AADARI was a “sham entity” used by the Complainant for personal gain. The custodian argued that the Appellate Division previously held that the doctrine of “piercing the corporate veil” applied when it appeared that an individual was using a corporation as an “alter ego” for personal purposes. Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517-19 (App. Div. 2011). The custodian argued that AADARI was registered to the Complainant’s home address, which was also the address of the Complainant’s mother and son, the only registered members of AADARI. The custodian also asserted that AADARI has never earned any income, filed a tax return, or held a bank account based upon the Complainant’s admissions within his personal bankruptcy filings. Thus, the custodian argued that AADARI was the Complainant’s “alter ego” being used for his personal benefit. Sean Wood, LLC, 422 N.J. Super. at 517.

Here, there exists compelling evidence to warrant a fact-finding hearing to determine whether Complainant and AADARI are one and the same. The GRC notes that Custodian's Counsel failed to recognize that the Complainant's OPRA request did state that he was requesting the records on behalf of AADARI. Notwithstanding, the issued raised by Custodian's Counsel here is reasonably similar to that raised in Neptune, GRC 2018-153. In order to ensure the integrity of OPRA's fee shifting provision, the GRC cannot reasonably award fees without first determining the relationship between the Complainant and AADARI.

Therefore, because of the limited factual record, this complaint should be referred to the OAL for a fact-finding hearing to determine the relationship between the Complainant and alleged client AADARI based on the standard set forth in Sean Wood, LLC, 422 N.J. Super. at 517. See Neptune, GRC 2018-153. Additionally, the OAL should also determine whether AADARI, the organization the Complainant purportedly represents, is legitimate. Should the OAL ultimately find that AADARI is legitimate and that the Complainant is legally representing them, the OAL shall determine whether the Complainant is a prevailing party and if so, the reasonable fee amount.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The current Custodian complied with the Council's July 28, 2020 Interim Order because he responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian imposed an unwarranted special service charge. N.J.S.A. 47:1A-5(c). However, the current Custodian cured the error by providing responsive records without charge to the Complainant in accordance with the Council's July 28, 2020 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
3. Because of the limited factual record, this complaint should be referred to the Office of Administrative Law for a fact-finding hearing to determine the relationship between the Complainant and alleged client African American Data and Research Institute based on the standard set forth in Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517 (App. Div. 2011). See Owoh, Esq. (O.B.O. AADARI) v. Neptune Police Dep't (Monmouth), GRC Complaint No. 2018-153 (April 2020). Additionally, the OAL should also determine whether AADARI, the organization the Complainant purportedly represents, is legitimate. Should the OAL ultimately find that AADARI is legitimate and that the Complainant is legally representing them, the OAL shall determine whether the Complainant is a prevailing party and if so, the reasonable fee amount.

Prepared By: Samuel A. Rosado  
Staff Attorney

September 22, 2020



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

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**INTERIM ORDER**

**July 28, 2020 Government Records Council Meeting**

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

Complaint No. 2018-155

v.

Freehold Township Police Department (Monmouth)  
Custodian of Record

At the July 28, 2020 public meeting, the Government Records Council (“Council”) considered the July 21, 2020 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 Complainant’s July 23, 2018 OPRA request Item Nos. 2 and 3. N.J.S.A. 46:1A-6. Specifically, the Custodian certified, and the record reflects, that Freehold Police Department does not possess or maintain the requested complaints. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian has not borne her burden of proof that a special service charge is warranted pertaining to the Complainant’s July 23, 2018 OPRA request Item No. 1. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that 3.75 hours represents an “extraordinary amount of time and effort” to prepare and disclose 147 pages of records. See N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002); Rivera v. Borough of Fort Lee Police Dep’t (Bergen), GRC Complaint No. 2009-285 (Interim Order dated May 24, 2011). However, the current Custodian may charge the actual copy associated with producing the records. See Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). Thus, the current Custodian shall grant access to the requested records, with redactions where applicable, once the Complainant remitted payment of same. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
3. **The current Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for**

**each redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>1</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>2</sup> to the Executive Director.<sup>3</sup>**

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 28<sup>th</sup> Day of July 2020

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: July 29, 2020**

---

<sup>1</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>2</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>3</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
July 28, 2020 Council Meeting**

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

**GRC Complaint No. 2018-155**

v.

**Freehold Township Police Department (Monmouth)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:<sup>3</sup>

1. Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) complaints and summonses that were prepared and filed by the Freehold Township Police Department (“FPD”) from January 2016 through present.
2. Drug possession complaints prepared and filed by the FPD from January 2016 through present.
3. Drug paraphernalia complaints prepared by the FPD from January 2016 through present.

**Custodian of Record:** James Lasky, III<sup>4</sup>  
**Request Received by Custodian:** July 23, 2018  
**Response Made by Custodian:** July 24, 2018  
**GRC Complaint Received:** July 30, 2018

**Background**<sup>5</sup>

**Request and Response:**

On July 23, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. That same day, the Custodian responded in writing stating that FPD located DWI/DUI summonses responsive to Item No. 1. The Custodian stated that because the records required redactions a special service charge would be imposed at an hourly rate of \$26.85. Regarding Item Nos. 2 and 3, the Custodian denied access,

---

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

<sup>2</sup> Represented by Andrew J. Ball, Esq. of Davison, Eastman, Muñoz, Lederman & Paone, P.A. (Freehold, N.J.).

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

<sup>4</sup> The current Custodian of Record is Kenneth Kleinman.

<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.

Rotimi Owoh, Esq. (On Behalf of African American Data and Research Institute) v. Freehold Township Police Department (Monmouth), 2018-155 – Findings and Recommendations of the Executive Director

stating that FPD did not retain copies of complaints signed by officers. The Custodian stated that the Freehold Township Municipal Court (“Court”) maintained the requested complaints.

On July 24, 2018, the Complainant responded to the Custodian stating that other police departments have produced the requested complaints and asked whether the Custodian would reconsider the denial. The Complainant also requested a breakdown of the estimated charge for each item.

On July 25, 2018, the Custodian replied to the Complainant stating that copies of DWI/DUI summonses would be provided upon receiving a deposit of \$57.50 out of an estimated total of \$115.38. The Custodian stated that the total was based upon an estimated 3.75 hours of work at \$26.85 per hour processing 147 pages of records. The Custodian also stated that because FPD officers were not required to submit copies of criminal complaints when creating reports, the complaints did not exist within FPD’s database. The Custodian stated that the Court may have access to those records.

On July 27, 2018, the Complainant responded to the Custodian stating that the estimated special service charge was excessive for just 147 pages of records. The Complainant also stated that there were programs that allowed the Custodian to redact the records electronically without cost. The Complainant also noted that the fees should be waived if electronically stored records are delivered electronically, such as e-mail. The Complainant also stated that he would not request the records from the Court since police departments were required to retain a copy of the criminal complaints or summonses for thirty (30) days after disposition, and municipalities were required to retain copies for fifteen (15) years. The Complainant requested the Custodian to respond by the end of business that day whether he would reconsider the special service charge.

#### Denial of Access Complaint:

On July 30, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the estimated charge to produce summonses responsive for Item No. 1 was excessive.

The Complainant further argued that, regarding Item Nos. 2 and 3, FPD would not provide the requested complaints despite other police departments providing them without issue. The Complainant argued that prior court rulings and GRC case law support the contention that complaints were subject to disclosure under OPRA. See O.R. v. Plainsboro Twp., Docket No. MID-L-5752-16; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). The Complainant also included a copy of the Records Retention and Disposal Schedule, arguing that it required FPD to maintain copies of the requested records.

The Complainant requested that the Council compel compliance with the OPRA request, and to reduce the imposed special service charge for Item No. 1. The Complainant also requested the Council to award him counsel fees.



Statement of Information:

On August 31, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on July 23, 2018. The Custodian certified that upon receipt, he and FPD officer Lt. Thomas McGowan began searching for records via FPD’s computerized records management system. The Custodian certified that at the time of the request, he was not able to electronically redact the requested records. The Custodian certified that he responded in writing on July 23, 2018 denying access in part and requesting a special service charge in part.

The Custodian certified that there were 147 pages of DWI/DUI summonses and an unknown number of summonses for drug possession in a motor vehicle. The Custodian certified that the estimated cost was only to process the DWI/DUI summonses. The Custodian also certified that upon receiving the Complainant’s July 27, 2018 correspondence, he requested software from Freehold Township (“Township”) that would allow him to redact records electronically. The Custodian certified that the Township purchased a license from Adobe and was installed on his computer on August 15, 2018.

The Custodian, through Counsel, argued that the estimated special service charge to produce records responsive to Item No. 1 was reasonable. Counsel asserted that the request sought a voluminous number of records spanning a period of over two (2) years. Counsel asserted that the Custodian performed sample searches for records to gauge an estimated time to process the request, resulting in the 3.75-hour estimate. Counsel asserted that when multiplied by the Custodian’s hourly rate, the total estimated cost was \$115.38 for 147 pages of records, including copying costs. Counsel noted that while the Custodian now possessed the ability to redact records electronically, he did not have the capability at the time of the request.

Counsel next argued that FPD did not deny access to the requested complaints of Item Nos. 2 and 3 but asserted that FPD was unable to provide them. Counsel included a certification from FPD Cpt. George Baumann, to elaborate on the criminal complaint process. Cpt. Baumann certified that complaints were created through the New Jersey Courts website, and when completed were printed and filed with the Court. Cpt. Baumann certified that while a “police copy” was part of the complaint form prior to the 2017 Bail Reform Law, said copy was also filed with the Court. Cpt. Baumann therefore certified that FPD did not possess paper or electronic copies before or after 2017 Bail Reform Law.

Counsel also argued that as a separate judicial entity, the Court was not subject to OPRA and did not answer to FPD or the Township. Counsel also asserted that the fact that other police departments maintained responsive complaints was inapposite, since FPD could not provide what it did not possess. Counsel highlighted Verry v. Borough of South Bound Brook, GRC Complaint No. 2010-174 (September 2011) to assert that the maintenance of complaints and summons varied among municipalities. Counsel argued that in Verry, the custodian certified that the borough’s municipal court was the only repository of summonses despite the complainant’s assertions. Counsel asserted that in the current matter, FPD possessed the requested summonses, but not the requested complaints.

Counsel further argued that the State's retention schedules compelled the maintenance of already existing records but did not require the production of records. Counsel noted that the retention schedules identified "Mobile Video/Audio Recording (MVR) Equipment Tapes" but asserted that not every police department possessed MVR equipment. Counsel therefore argued that the schedules could not be used to demonstrate a legal requirement to create government records. Counsel thus argued that the complaint should be dismissed because FPD could not produce records it did not possess. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Counsel noted that the Complainant's unilateral imposition of deadlines and demands upon the Township violated the principles and purposes of OPRA. Grieco v. Borough of Haddon Heights, 449 N.J. Super. 513, 520 (October 19, 2015). Counsel contended that OPRA did not require public agencies to purchase software in order to respond to certain requests, and the Complainant's allegation that FPD should have done so instead of imposing a special service charge was baseless.

Lastly, Counsel asserted that, should the Council rule that the Custodian's response was improper, the Complainant was not entitled to an award of attorney's fees. Counsel asserted that in Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006), the Council held that OPRA's attorney fee award was intended to compensate an attorney hired to represent a plaintiff, and not an attorney who, as the plaintiff, represented himself in an action. Counsel asserted that the Complainant was an attorney representing himself. Counsel argued that although the Complainant captioned the instant matter as being "on behalf of AADARI", the Complainant's OPRA request listed "The Law Office of Rotimi Owoh" under "Requested Information" and signed the request himself. Counsel therefore argued that the Complainant was not entitled to attorney's fees in the event the Council deems him a prevailing party.

#### Additional Submissions:

On February 25, 2020, the GRC requested a 14-point special service charge analysis from the Custodian. On March 2, 2020 the current Custodian provided the following responses to the 14-point analysis:

**1. What records are requested?**

**Response:** DWI/DUI summonses that were prepared and filed by FPD from January 2016 through present.

**2. Give a general nature description and number of the government records requested.**

**Response:** DWI/DUI summonses are single page documents issued by FPD regarding such incidents. Each contains a driver's license number and date of birth and requires redaction.

**3. What is the period of time over which the records extend?**

**Response:** January 1, 2016 through the date of the request, July 16, 2018.

**4. Are some or all of the records sought archived or in storage?**

**Response:** None of the records requested are archived or in storage.

**5. What is the size of the agency (total number of employees)?**

**Response:** The total number of employees with FPD at the time the request was submitted was 64.

**6. What is the number of employees available to accommodate the records request?**

**Response:** N/A.

**7. To what extent do the requested records have to be redacted?**

**Response:** As noted in Paragraph 6, every single page of the requested records contained a birth date and driver's license, and thus required redaction.

**8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve, and assemble the records for copying?**

**Response:** The hourly rate of the Custodian was \$26.85; the Custodian would retrieve, redact and assemble all responsive records.

**9. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?**

**Response:** No additional personnel were required to either monitor any inspection or return records to storage (as these were electronic records).

**10. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to return records to their original storage place?**

**Response:** See Paragraph 9.

**11. What is the reason that the agency employed, or intends to employ, the particular level of personnel to accommodate the records request?**

**Response:** FPD employed the Custodian to accommodate this (and other) records requests. The Custodian, a retired police officer, had both the training and experience to identify various police records and utilize FPD software to respond to requests efficiently. The Custodian could further perform such functions at a lower hourly rate than, for example, employing active police officers to respond.

**12. Who (name and job title) in the agency will perform the work associated with the records request and that person’s hourly rate?**

**Response:** See Paragraph 8.

**13. What is the availability of information technology and copying capabilities?**

**Response:** At the time the request was filed, and the special service charge was estimated, FPD was not able to electronically redact any records. Accordingly, all responsive records would need to be printed, manually redacted, and scanned. Additionally, it should be noted that while FPD now can electronically (although still not automatically) redact records, this software was not installed until August 15, 2018 – long after the Complainant submitted his complaint on July 30, 2018.

**14. Give a detailed estimate categorizing the hours needed to identify, copy or prepare for inspection, produce, and return the requested documents.**

**Response:** The current Custodian certified that the estimate provided by the Custodian on July 25, 2018 was based upon the ability to find, print, and redact approximately ten (10) summonses in fifteen (15) minutes.

**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.

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. See Pusterhofer, GRC 2005-49.

Additionally, the New Jersey Supreme Court has held that retention schedules created in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 to -32, did not satisfy the “required by law” standard under OPRA. See N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 568 (2017), aff’g in relevant part and rev’g in part, 441 N.J. Super. 70, 106-07 (App. Div. 2015). The Court found that if the retention schedules carried the force of law, parts of OPRA would be rendered meaningless due to the retention schedules’ comprehensive list of records. Id. The Court therefore held that “the retention schedules adopted by the State Records Committee [do not] meet the ‘required by law’ standard for purposes of OPRA.” Id.

In the current matter, the Complainant asserted that the State’s retention schedules required FPD to possess copies of the requested complaints for the stated period. The Custodian certified that FPD did not possess or maintain the requested records and that the retention schedules did not

require the applicable agency to maintain every identified record.

Based upon the prevailing law, the Complainant's reliance on the retention schedules as a legal requirement to keep and maintain criminal complaints is misplaced. Instead, the retention schedules determine how records that may be in the agency's possession are to be maintained, and are not a legal requirement to make, maintain, or keep on file every identified record. See N. Jersey Media Grp. Inc., 229 N.J. at 568. Therefore, the retention schedules do not counter the Custodian's certification that FPD does not possess or maintain the requested complaints.

Accordingly, the Custodian lawfully denied access to the Complainant's July 23, 2018 OPRA request Item Nos. 2 and 3. N.J.S.A. 46:1A-6. Specifically, the Custodian certified, and the record reflects, that FPD does not possess or maintain the requested complaints. See Pusterhofer, GRC 2005-49.

### **Special Service Charge**

Whenever a records custodian asserts that fulfilling an OPRA records request requires an "extraordinary" expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides that:

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an *extraordinary expenditure of time and effort to accommodate the request*, the public agency may charge, in addition to the actual cost of duplicating the record, a *special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies . . .*

[Id. (emphasis added).]

The determination of what constitutes an "extraordinary expenditure of time and effort" under OPRA must be made on a case by case basis and requires an analysis of a variety of factors. These factors were discussed in Courier Post, 360 N.J. Super. at 199. There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the "extraordinary burden" placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian's time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an "extraordinary expenditure of time and effort to accommodate" pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4)

the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

The court determined that in the context of OPRA, the term “extraordinary” will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. Id. at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” Id.

Moreover, OPRA provides that providing access to records electronically “shall be provided free of charge, but the public agency may charge for the actual costs of any needed supplies such as computer discs.” N.J.S.A. 47:1A-5(b); see also McBride v. Borough of Mantoloking (Ocean), GRC Complaint No. 2009-138 (Interim Order dated April 8, 2010). However, the foregoing does not necessarily mean that a custodian can never charge for electronic delivery unless supplies are involved. For example, the Council has also previously held that a custodian could charge a per-page copy cost for redacted records if the agency did not have ability to electronically redact same. Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). Thus, it follows that requestors seeking records electronically may be subject to the imposition of actual costs for duplication of records. N.J.S.A. 47:1A-5(b)-(c).

Here, the Complainant disputed the assessed special service charge of \$115.38 for 147 pages of DWI/DUI summonses. Conversely, the Custodian argued that the fee was warranted and reasonable, as the requested records sought DWI/DUI summonses over a 2 ½ year period. The Custodian asserted that the request required fifteen (15) minutes to print and redact ten (10) summonses, with himself as the only employee tasked with processing the request.

Upon review of the evidence the GRC is not satisfied that an expenditure of 3.75 hours represents an “extraordinary amount of time and effort” for one (1) employee to review and redact 147 pages of records. Courier Post, 360 N.J. Super. at 199. In contrast, the Council upheld the Borough of Fort Lee Police Department’s estimated seven (7) hours to review and redact 411 pages of records for personal information, utilizing three (3) employees. Rivera v. Borough of Fort Lee Police Dep’t (Bergen), GRC Complaint No. 2009-285 (Interim Order dated May 24, 2011). Moreover, the current Custodian certified that fulfilling OPRA requests seeking similar records was within the scope of the Custodian’s regular duties and expertise.

Additionally, the GRC notes that although the Custodian certified that FPD has the means of electronically redacting the responsive records, FPD did not gain the ability until well after the OPRA request was filed. Therefore, the current Custodian may charge the associated copying cost to produce the responsive records in accordance with Paff, GRC 2010-09.

Accordingly, the Custodian has not borne her burden of proof that a special service charge is warranted pertaining to the Complainant’s July 23, 2018 OPRA request Item No. 1. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that 3.75 hours represents an

“extraordinary amount of time and effort” to prepare and disclose 147 pages of records. See N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. at 199; Rivera, GRC 2009-285. However, the current Custodian may charge the actual copy associated with producing the records. See Paff, GRC 2010-09. Thus, the current Custodian shall grant access to the requested records, with redactions where applicable, once the Complainant remitted payment of same. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).

### **Knowing & Willful**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

### **Prevailing Party Attorney’s Fees**

The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian’s compliance with the Council’s Interim Order.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian lawfully denied access to the Complainant’s July 23, 2018 OPRA request Item Nos. 2 and 3. N.J.S.A. 46:1A-6. Specifically, the Custodian certified, and the record reflects, that Freehold Police Department does not possess or maintain the requested complaints. See Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No. 2005-49 (July 2005).
2. The Custodian has not borne her burden of proof that a special service charge is warranted pertaining to the Complainant’s July 23, 2018 OPRA request Item No. 1. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that 3.75 hours represents an “extraordinary amount of time and effort” to prepare and disclose 147 pages of records. See N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002); Rivera v. Borough of Fort Lee Police Dep’t (Bergen), GRC Complaint No. 2009-285 (Interim Order dated May 24, 2011). However, the current Custodian may charge the actual copy associated with producing the records. See Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011). Thus, the current Custodian shall grant access to the requested records, with redactions where applicable, once the Complainant remitted payment of same. See Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006).
3. **The current Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for**

**each redaction, if applicable. Further, the Custodian shall simultaneously deliver<sup>6</sup> certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,<sup>7</sup> to the Executive Director.<sup>8</sup>**

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
5. The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado  
Staff Attorney

July 21, 2020

---

<sup>6</sup> The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

<sup>7</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>8</sup> Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Rotimi Owoh, Esq. (On Behalf of African American Data and Research Institute) v. Freehold Township Police Department (Monmouth), 2018-155 – Findings and Recommendations of the Executive Director