



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

November 9, 2022 Government Records Council Meeting

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

Complaint No. 2018-157

v.

Borough of Bradley Beach (Monmouth)
Custodian of Record

At the November 9, 2022 public meeting, the Government Records Council (“Council”) considered the October 27, 2022 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 parties settled the matter via agreement and noticed the Office of Administrative Law via e-mail on July 28, 2022. 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 9th Day of November 2022

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: November 15, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
November 9, 2022 Council Meeting**

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

GRC Complaint No. 2018-157

v.

**Borough of Bradley Beach (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:³

1. Driving While Intoxicated/Driving under the Influence (“DWI/DUI”) complaints prepared and filed by the Borough of Bradley Beach Police Department (“BBPD”) from January 2016 through present.
2. Drug possession complaints prepared and filed by the BBPD from January 2016 through present.
3. Drug paraphernalia complaints and summonses prepared by the BBPD from January 2016 through present.

Custodian of Record: Kelly Barrett⁴
Request Received by Custodian: July 16, 2018
Response Made by Custodian: July 24, 2018
GRC Complaint Received: July 31, 2018

Background

November 9, 2021 Council Meeting:

At its November 9, 2021 public meeting, the Council considered the October 26, 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, found that:

1. The Custodian failed to comply with the Council’s September 29, 2020 Interim Order because she failed to respond at all.

¹ The Complainant represents the African American Data and Research Institute.

² Represented by Gregory J. Cannon, Esq. of Sobel Han & Cannon, LLP (Aberdeen, NJ). Previously represented by Jose Rivera-Benitez, Esq. of Shain Schaffer, P.C. (Bernardsville, NJ).

³ The Complainant sought additional records that are not at issue in this complaint.

⁴ The current Records Custodian is Erica Kostyz.

2. “The Council shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.” N.J.A.C. 5:105-2.9(c). The Council’s September 29, 2020 Interim Order to disclose the relevant records is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6.
3. The Custodian improperly imposed a special service charge to process the Complainant’s request. N.J.S.A. 47:1A-5(c). Furthermore, the Custodian failed to comply with the Council’s September 29, 2020 Interim Order. Thus, it is possible that the Custodian’s actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, the complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
4. Pursuant to the Council’s September 29, 2020 Interim Order, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2007). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Council ordered disclosure of the requested records without the imposition of a special service charge. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 423, and Mason, 196 N.J. 51. For administrative ease, the Office of Administrative Law should determine the total amount of the award of reasonable attorney’s fees.

Procedural History:

On November 10, 2021, the Council distributed its November 9, 2021 Interim Order to all parties. On April 20, 2022, the complaint was transmitted to the Office of Administrative Law (“OAL”). On July 28, 2022, the Complainant submitted a letter via e-mail to the GRC and the OAL stating that the matter had been resolved and the Borough of Bradley Beach approved the settlement between the parties. On September 30, 2022, Tracy A. Thomas with the OAL requested confirmation from the parties regarding the settlement. That same day, the Complainant e-mailed Ms. Thomas stating that he previously noticed the OAL on July 28, 2022 and reiterated his desire to withdraw the matter. On October 13, 2022, the OAL returned the complaint back to the GRC marked “SETTLEMENT RETURN”.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss the complaint because the parties settled the matter via agreement and noticed the Office of Administrative Law via e-mail on July 28, 2022. Therefore, no further adjudication is required.

Prepared By: Samuel A. Rosado
Staff Attorney

October 27, 2022



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DEPARTMENT OF COMMUNITY AFFAIRS
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PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

November 9, 2021 Government Records Council Meeting

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

Complaint No. 2018-157

v.

Borough of Bradley Beach (Monmouth)
Custodian of Record

At the November 9, 2021 public meeting, the Government Records Council (“Council”) considered the October 26, 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:

1. The Custodian failed to comply with the Council’s September 29, 2020 Interim Order because she failed to respond at all.
2. “The Council shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council.” N.J.A.C. 5:105-2.9(c). The Council’s September 29, 2020 Interim Order to disclose the relevant records is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6.
3. The Custodian improperly imposed a special service charge to process the Complainant’s request. N.J.S.A. 47:1A-5(c). Furthermore, the Custodian failed to comply with the Council’s September 29, 2020 Interim Order. Thus, it is possible that the Custodian’s actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, the complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.
4. Pursuant to the Council’s September 29, 2020 Interim Order, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2007). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Council ordered disclosure of the requested records without the imposition of a special service charge. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled

to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 423, and Mason, 196 N.J. 51. For administrative ease, the Office of Administrative Law should determine the total amount of the award of reasonable attorney's fees.

Interim Order Rendered by the
Government Records Council
On The 9th Day of November 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: November 10, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
November 9, 2021 Council Meeting**

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

GRC Complaint No. 2018-157

v.

**Borough of Bradley Beach (Monmouth)²
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2. Drug possession complaints prepared and filed by the BBPD from January 2016 through present.
3. Drug paraphernalia complaints and summonses prepared by the BBPD from January 2016 through present.

Custodian of Record: Kelly Barrett⁴

Request Received by Custodian: July 16, 2018

Response Made by Custodian: July 24, 2018

GRC Complaint Received: July 31, 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. Notwithstanding their origination from the Judiciary, because the Borough of Bradley Beach Police Department kept and maintained copies of the requested complaints and

¹ The Complainant represents the African American Data and Research Institute.

² Represented by Gregory J. Cannon, Esq. of Sobel Han & Cannon, LLP (Aberdeen, NJ). Previously represented by Jose Rivera-Benitez, Esq. of Shain Schaffer, P.C. (Bernardsville, NJ).

³ The Complainant sought additional records that are not at issue in this complaint.

⁴ The current Records Custodian is Erica Kostyz.

summons, they meet the definition of a government record. N.J.S.A. 47:1A-1.1; Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2013-299 (September 2014); and Merino v. Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). Thus, they are within the Council's jurisdiction and subject to access under OPRA unless otherwise exempt. N.J.S.A. 47:1A-7(g).

2. The Custodian has not borne her burden of proof that a special service charge is warranted. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that the estimated fee represents the actual time and effort required to prepare and disclose the records. See N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 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). Thus, the current Custodian shall disclose the responsive records without the imposition of a special service charge.
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 deliver⁵ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director.⁷**
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 September 30, 2020, the Council distributed its Interim Order to all parties. On August 4, 2021, GRC informed the parties via e-mail that no correspondence has been received pertaining to the matter. The GRC included copies of the Council's Interim Order and cover letter with the e-mail. The GRC requested a status update on compliance with the Council's Order by August 9, 2021.

On September 14, 2021, the GRC again requested a status update on compliance with the

⁵ 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.

⁶ "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."

⁷ 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.

Council's September 29, 2020 Interim Order. The GRC also stated that if no update was provided by the end of business on September 17, 2021, the GRC may move forward with adjudication.

On September 22, 2021, the Complainant responded to the GRC stating that he did not have an update to provide on the matter. To date, the neither the Custodian nor Custodian's Counsel has responded to the GRC.

Analysis

Compliance

At its September 29, 2020 meeting, the Council ordered the Custodian to locate and provide to the Complainant the requested records without the imposition of a special service charge. The Council further order the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On September 30, 2020, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on October 7, 2020.

On August 4, 2021, the GRC requested a status update on compliance from the Custodian, and another on September 14, 2021. As of this date, the GRC has not received a response from the Custodian.

Therefore, the Custodian failed to comply with the Council's September 29, 2020 Interim Order because she failed to respond at all.

Council's September 29, 2020 Interim Order is Enforceable

"The Council shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council." N.J.A.C. 5:105-2.9(c). The Council's September 29, 2020 Interim Order to disclose the relevant records is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6.

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 improperly imposed a special service charge to process the Complainant’s request. N.J.S.A. 47:1A-5(c). Furthermore, the Custodian failed to comply with the Council’s September 29, 2020 Interim Order. Thus, it is possible that the Custodian’s actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, the complaint should be referred to the Office of Administrative Law (“OAL”) for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied 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.]

In Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006), the court 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. 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 (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.” Mason, 196 N.J. at 71, (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 also 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 (2008).]

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, [certif. denied] (1984).

[Id. at 76.]

Here, the Complainant sought complaints prepared by BBPD pertaining to drug possession, drug paraphernalia, or DUI/DWI offenses. The Custodian assessed a special service charge to process the request. The Complainant filed the instant complaint asserting that the special service charge was unwarranted. The Council ordered disclosure of said records without charge, but the Custodian has not responded to the Interim Order.

In determining whether the Complainant is a prevailing party entitled to attorney's fees, the GRC is satisfied that the evidence of record supports a conclusion in the affirmative. In accordance with the Council's September 29, 2020 Interim Order, the Custodian was required to provide the requested records without the imposition of a special service charge, which was the Complainant's desired result in filing the instant complaint. Teeters, 387 N.J. Super. at 432. Thus, a causal nexus exists between this complaint and the change in the Custodian's conduct. Mason 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney's fees.⁸

Therefore, pursuant to the Council's September 29, 2020 Interim Order, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters, 387 N.J. Super. at 432. Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the Council ordered disclosure of the requested records without the imposition of a special service charge. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 423, and Mason, 196 N.J. 51. For administrative ease, the OAL should determine the total amount of the award of reasonable attorney's fees.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to comply with the Council's September 29, 2020 Interim Order because she failed to respond at all.
2. "The Council shall, pursuant to New Jersey Rules Governing the Courts, R. 4:67-6, have the authority to enforce compliance with the orders and decisions issued by the Council." N.J.A.C. 5:105-2.9(c). The Council's September 29, 2020 Interim Order to disclose the relevant records is enforceable in the Superior Court if the Complainant decides to exercise that option. R. 4:67-6.
3. The Custodian improperly imposed a special service charge to process the Complainant's request. N.J.S.A. 47:1A-5(c). Furthermore, the Custodian failed to comply with the Council's September 29, 2020 Interim Order. Thus, it is possible that the Custodian's actions were intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional. As such, the complaint should be referred to the Office of Administrative Law for a determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

⁸ The Council makes this determination with the understanding that the Complainant acted on behalf of a bona fide client at the time of the request. Although the Complainant's status as representing an actual client has been previously challenged, the available evidence on the record is insufficient to address that issue herein. See Owoh, Esq. (O.B.O. AADARI) v. Neptune City Police Dep't (Monmouth), GRC Complaint No. 2018-153 (April 2020) and Owoh, Esq. (O.B.O. AADARI) v. Freehold Twp. Police Dep't (Monmouth), GRC Complaint No. 2018-155 (Interim Order dated September 29, 2020).

4. Pursuant to the Council’s September 29, 2020 Interim Order, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2007). Additionally, a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Council ordered disclosure of the requested records without the imposition of a special service charge. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 423, and Mason, 196 N.J. 51. For administrative ease, the Office of Administrative Law should determine the total amount of the award of reasonable attorney’s fees.

Prepared By: Samuel A. Rosado
Staff Attorney

October 26, 2021



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INTERIM ORDER

September 29, 2020 Government Records Council Meeting

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Borough of Bradley Beach (Monmouth)
Custodian of Record

At the September 29, 2020 public meeting, the Government Records Council (“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, finds that:

1. Notwithstanding their origination from the Judiciary, because the Borough of Bradley Beach Police Department kept and maintained copies of the requested complaints and summonses, they meet the definition of a government record. N.J.S.A. 47:1A-1.1; Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014); and Merino v. Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). Thus, they are within the Council’s jurisdiction and subject to access under OPRA unless otherwise exempt. N.J.S.A. 47:1A-7(g).
2. The Custodian has not borne her burden of proof that a special service charge is warranted. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that the estimated fee represents the actual time and effort required to prepare and disclose the records. See N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch. Dist., 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). Thus, the current Custodian shall disclose the responsive records without the imposition of a special service charge.
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 deliver¹**

¹ 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.

certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³

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.

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On The 29th 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

² "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."

³ 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
September 29, 2020 Council Meeting**

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

GRC Complaint No. 2018-157

v.

**Borough of Bradley Beach (Monmouth)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:³

1. Driving While Intoxicated/Driving under the Influence (“DWI/DUI”) complaints prepared and filed by the Borough of Bradley Beach Police Department (“BBPD”) from January 2016 through present.
2. Drug possession complaints prepared and filed by the BBPD from January 2016 through present.
3. Drug paraphernalia complaints and summonses prepared by the BBPD from January 2016 through present.

Custodian of Record: Kelly Barrett⁴
Request Received by Custodian: July 16, 2018
Response Made by Custodian: July 24, 2018
GRC Complaint Received: July 31, 2018

Background⁵

Request and Response:

On July 16, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 24, 2018, the Custodian responded in writing stating there were no records available containing all the requested information. The Custodian stated she received a cost estimate to complete the request and asked

¹ The Complainant represents the African American Data and Research Institute.

² Represented by Gregory J. Cannon, Esq. of Sobel Han & Cannon, LLP (Aberdeen, NJ). Previously represented by Jose Rivera-Benitez, Esq. of Shain Schaffer, P.C. (Bernardsville, NJ).

³ The Complainant sought additional records that are not at issue in this complaint.

⁴ The current Records Custodian is Erica Kostyz.

⁵ 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.

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the Complainant whether he wished to proceed. The Custodian included an e-mail from DLt. Ted Bianchi, wherein he stated it would take eight (8) hours to complete the request for a total of \$560.

Later in the day on July 24, 2018, the Complainant responded to the Custodian requesting an itemized accounting of each requested item. The Custodian replied by forwarding the breakdown from DLt. Bianchi. DLt. Bianchi stated that each request item would take two (2) hours to complete, and each item needed to be physically located, copied, and returned.

On July 30, 2018, the Complainant responded to the Custodian stating that due to the excessive charge, he wished to know the cost of receiving just the records at issue.

On July 31, 2018, the Custodian responded to the Complainant stating that that the time to complete the request would be reduced by two (2) hours, and the estimated total would be \$418.92. That same day, the Complainant responded to the Custodian stating that because the revised cost was also excessive, he asked for a new estimate based on records dated from January 2018 to present, rather than from 2016 to present. The Complainant also asked how many pages comprised the \$418.92 estimate.

Later that same day, the Custodian responded by stating that the revised request would not exceed \$50. Thereafter, the Complainant asked the Custodian how many pages comprised the \$50 estimate, how much the Borough of Bradley Beach (“Borough”) needed as a deposit, and when the records would be available. The Complainant also asked how many pages comprised the \$418.92 estimate a second time. The Custodian responded stating that the Borough has seven (7) days to respond to the request and the first day was not counted. The Custodian also stated that the Borough was unable to determine the number of pages the \$418.92 represents since the cost was for time spent researching the request.

Denial of Access Complaint:

On July 31, 2018,⁶ the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Borough failed to provide a breakdown of the \$418.92 special service charge estimate and failed to provide a 14-point analysis to justify same. The Complainant further argued that the Borough’s imposition of a charge just for researching the request was improper.

The Complainant requested that the Council find the Custodian in violation of OPRA for charging excessive costs and failing to comply with the 14-point analysis required to impose a special service charge. The Complainant also requested that the Council award him attorney’s fees.

Additional Correspondence:

On August 1, 2018, the Custodian asked the Complainant whether he would amend his request to read all complaints and summonses issued by BBPD filed with the municipal court. The

⁶ The GRC received the Complainant’s Denial of Access Complaint at 3:09 p.m. Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. Borough of Bradley Beach (Monmouth), 2018-157 – Findings and Recommendations of the Executive Director

Complainant responded that same day, saying that a complaint has been filed with the GRC, so there was no need to modify the request.

Statement of Information:

On August 30, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 16, 2018. The Custodian certified that because the request sought complaints, summonses, and tickets, BBPD was asked to assist in processing the request. The Custodian certified that DLt. Bianchi was brought on because the BBPD did not have a secretary or other employee available to complete the task. The Custodian certified she responded to the Complainant on July 24, 2018 providing an initial special service charge estimate, and thereafter provided the revised estimate of \$418.92 on July 31, 2018.

The Custodian argued that no violation of OPRA occurs when a complainant voluntarily narrows the scope of the request but then files a complaint before the revised request can be processed. The Custodian asserted that the Complainant “jumped the gun” and deprived her the opportunity of satisfying the request. The Custodian asserted that the Complainant’s decision to file the instant matter while discussions remained ongoing suggested an element of bad faith. The Custodian asserted that but for the Complainant’s complaint filing, the request would have been satisfied, as she and the Complainant continued to discuss revisions to the original request.

The Custodian also argued that the assessed charge was not excessive, asserting that OPRA allows custodians to impose a special service charge which represents the labor cost of the lowest paid employee necessary to satisfy the request. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002). The Custodian asserted that in this matter, the initial request required the work of the lowest paid employee of the BBPD at an hourly rate of \$69.82 for an estimated eight (8) hours of work, or \$558.56 total. The Custodian also asserted that 282 pages were located, and that the revised request of \$418.92 represented a two (2) hour reduction in labor.

The Custodian asserted that DLt. Bianchi was tasked to process the request because the BBPD did not have clerical staff. The Custodian asserted that using an employee from another department would have substantially increased the labor hours required to complete the task. The Custodian asserted that the varying categories of records required segregation, redactions as necessary, and copying. The Custodian asserted that the quoted charge was fair and reasonable and thus justifiable to complete the task.

The Custodian asserted that there was no deliberate and knowing intent to deprive the Complainant the records sought. The Custodian requested that the Council dismiss the matter as lacking merit.

Additional Submissions:

On August 31, 2018, the Complainant submitted a brief in response to the Custodian’s SOI. The Complainant reiterated his assertion that the charge was excessive “for the time spent

researching the request.” The Complainant contended that a request for “complaints” and “summonses” should not require research as they were commonly recognized terms for police departments. The Complainant asserted that redacting the records did not require specialized training and the task could be handled by the lowest paid employee in the Borough.

The Complainant further argued that at least thirty-five (35) other Police Departments in the State charged significantly less or no fees for the same records. The Complainant asserted that when making a comparative market analysis, it was clear that the Borough’s estimated charge was unreasonable. The Complainant also argued that he never consented to a special service charge or waived his right to file a complaint regarding same.

Lastly, the Complainant asserted that modern technology allows for the electronic storage and redaction of records, and the GRC should not reward “inefficient municipalities” that wish to charge \$498.92 to research DUI/DWI and drug possession complaints and summonses.

On February 25, 2020, the GRC requested a 14-point special service charge analysis from the Custodian. On March 6, 2020, the Custodian’s Counsel responded in writing seeking an extension of time until April 3, 2020 to provide a response. On March 11, 2020, the GRC granted the extension request. On April 4, 2020, Counsel provided the following responses to the 14-point analysis:

1. What records are requested?

Response:

- a. Copies of complaints that were prepared by the BBPD relating to DRE Rolling Logs.
- b. Copies of DWI/DUI complaints that were prepared and filed by the BBPD from January of 2016 to the present.
- c. Copies of drug possession complaints that were prepared and filed by the BBPD from January of 2016 to the present.

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

Response: See Borough’s SOI, at Attachment No. 9, which includes a description of each category of records, by year requested, together with the exact number of pages attendant to each category of record. By way of future response, the Request principally seeks the “filed” complaints, summonses, and tickets from each and every case file, which are maintained by defendant (because they’re court records). The records retrieval required the removal and copying of each individual document from each individual defendant’s case file. The files are maintained by date and case docket number (because they’re court records), and not by type of charged offense. Thus, someone with authority to review case files was required to review every case file to determine whether it pertained to “DWI/DUI” or “drug possession” or “drug paraphernalia” per the Request. The “Arrest Listings” is a separate record, from which, all personal identifiers would have had to be redacted from 197 pages for production too Requestor.

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

Response: Twenty-eight (28) months.

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

Response: No.

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

Response: Forty-six (46) employees, including police officers, as is relevant to this Request.

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

Response: Insofar as BBPD experiences drastic seasonal differences in administrative workload, BBPD does not employ a secretary or administrative assistant. Once police officer, with occasional assistance from command officers to cover overhead, is utilized to fulfill BBPD's record-keeping duties, including responding to OPRA requests.

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

Response: Each and every pages of the records requested would need to be, at minimum, reviewed for redactions of personal identifiers of municipal court defendants.

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: Insofar as the records requested pertained to both closed and pending criminal cases, someone with the authority to review such information was required to review every case file to determine whether it pertained to "DWI/DUI" or "drug possession" or "drug paraphernalia" per the Request. Because all municipal court personnel are prohibited by the Administrative Office of the Courts from fulfilling OPRA requests, and because BBPD employs only police officers, only DLt. Bianchi, was assigned to records during the summer of 2018, was available to respond to the Request.

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: Per the contemporaneous e-mail from DLt. Bianchi, dated July 19, 2018, he estimated eight (8) hours of work to prepare the response at \$70 per hour, which was DLt. Bianchi's rate of pay at the time. See Borough's SOI, at Attachment No. 8.

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: The review, retrieval, copying, and return of the records sought by the Request would all be done simultaneously insofar as each record would be contained in a separate case folder, and would need to be returned before continuing forward through the case files. There is no methodology of parsing the retrieval of cost vs. the return cost in this particular case.

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

Response: Insofar as the records requested pertained to both closed and pending criminal cases, someone with the authority to review such information was required to review every case file to determine whether it pertained to “DWI/DUI” or “drug possession” or “drug paraphernalia” per the Request. Because all municipal court personnel are prohibited by the Administrative Office of the Courts from fulfilling OPRA requests, and because BBPD employs only police officers, only DLt. Bianchi, was assigned to records during the summer of 2018, was available to respond to the Request.

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: BBPD DLt. Bianchi at his 2018 salary equivalent rate of \$70 per hour.

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

Response: Because municipal courts do not utilize eCourts, and moreover, do not allow search of their case management system in response to an OPRA request, there was no technology available to assist in this case – only paper case files.

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

Response: Per the contemporaneous e-mail from DLt. Bianchi, dated July 19, 2018, he estimated eight (8) hours of work to prepare the response at \$70 per hour, which was DLt. Bianchi’s rate of pay at the time. See Borough’s SOI, at Attachment No. 8.

In addition to the above responses, Counsel raised the issue of jurisdiction in the instant matter. Counsel asserted that the requested complaints, summonses, and tickets were court records as listed in the “Municipal Court Records Retention Schedule” which accompanied the SOI. Counsel argued that OPRA was not applicable to court records, and therefore the request was not within the GRC’s jurisdiction to adjudicate.

On April 20, 2020, the Complainant submitted a reply to Counsel’s submission. The Complainant asserted that the GRC has jurisdiction over OPRA requests seeking summonses and complaints like the superior court. The Complainant also attached an excerpted order and opinion

from AADARI v. Town of West New York, Docket No. HUD-L-31-20, as well as a hearing transcript from AADARI v. City of Millville, Docket No. CUM-L-712-18.⁷

Analysis

Jurisdiction

OPRA defines government records as documents that are “made, maintained, *or kept on file* . . . or that has been *received* in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof[.]” N.J.S.A. 47:1A-1.1 (emphasis added). OPRA also provides that the GRC “shall not have jurisdiction over the Judicial or Legislative Branches of State Government or any agency, officer, or employee of those branches. N.J.S.A. 47:1A-7(g).”

The Council has long held that documents created by the Judiciary can be subject to OPRA when sought from the custody of an Executive Branch agency. See Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014). In Pitts, the custodian argued in part that because the requested presentence report was a court record created by the Judiciary, it was not a government record under N.J.S.A. 47:1A-1.1, and not within the GRC’s jurisdiction under N.J.S.A. 47:1A-7(g). The Council disagreed, holding that because the agency received and kept on file a copy of the record, it still met the definition of a government record. N.J.S.A. 47:1A-1.1. See also Merino v. Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004).

In the instant matter, Counsel argued that because the requested summonses and complaints were court records, they were not subject to the GRC’s jurisdiction. However, as was the case in Pitts, GRC 2013-299, the evidence of record demonstrates that BBPD kept and maintained copies of the summonses and complaints, as the responses to the 14-point analysis state that processing the request required retrieving the records from paper case files. Thus, the requested records meet the definition of a government record and are subject to access under OPRA. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-7(g).

Therefore, notwithstanding their origination from the Judiciary, because BBPD kept and maintained copies of the requested complaints and summonses, they meet the definition of a government record. N.J.S.A. 47:1A-1.1; Pitts, GRC 2013-299; and Merino, 2003-110. Thus, they are within the Council’s jurisdiction and subject to access under OPRA unless otherwise exempt. N.J.S.A. 47:1A-7(g).

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:

⁷ The Appellate Division recently reversed the trial court in Simmons v. Mercado, 2020 N.J. Super. LEXIS 125 (App Div. June 11, 2020).

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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 v. Lenape Reg’l High Sch. Dist., 360 N.J. Super. 191, 199 (Law Div. 2002). 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.

Here, the Complainant disputed the assessed estimate of \$418.92 for conducting research of the request. Thereafter, the Complainant maintained his dispute when the Custodian certified in the SOI that the estimate included the time spent for research and processing 282 pages of records. Additionally, DLt. Bianchi certified that because BBPD did not have a secretary, he was the lowest paid employee capable of processing the request at \$69.82 per hour.

Upon review of the evidence, the GRC is not satisfied that an expenditure of six (6) hours represents an “extraordinary amount of time and effort” for one (1) employee to review and redact 282 pages of records. Courier Post, 360 N.J. Super. at 199. By comparison, in Rivera v. Borough

of Fort Lee Police Dep't (Bergen), GRC Complaint No. 2009-285 (Interim Order dated May 24, 2011), the agency estimated seven (7) hours of work to review and redact 411 pages of records for personal information, utilizing three (3) employees. Here, Counsel's 14-point analysis did not elaborate as to what daily functions would be disrupted or were beyond the scope of DLt. Bianchi's regular job duties. Additionally, Counsel did not provide a detailed assessment of the time needed to process the records, instead estimating a flat two (2) hours for each request item, regardless of the estimated number of pages responsive to each.

Accordingly, the Custodian has not borne her burden of proof that a special service charge is warranted. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that the estimated fee represents the actual time and effort required to prepare and disclose the records. See N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. at 199; Rivera, GRC 2009-285. Thus, the current Custodian shall disclose the responsive records without the imposition of a special service charge.

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. Notwithstanding their origination from the Judiciary, because the Borough of Bradley Beach Police Department kept and maintained copies of the requested complaints and summonses, they meet the definition of a government record. N.J.S.A. 47:1A-1.1; Pitts v. N.J. Dep't of Corr., GRC Complaint No. 2013-299 (September 2014); and Merino v. Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). Thus, they are within the Council's jurisdiction and subject to access under OPRA unless otherwise exempt. N.J.S.A. 47:1A-7(g).
2. The Custodian has not borne her burden of proof that a special service charge is warranted. N.J.S.A. 47:1A-6. Specifically, the evidence of record does not support that the estimated fee represents the actual time and effort required to prepare and disclose the records. See N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l High Sch. Dist., 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). Thus, the current Custodian shall disclose the responsive records without the imposition of a special service charge.

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 deliver⁸ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁹ to the Executive Director.¹⁰**
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

September 22, 2020

⁸ 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.

⁹ "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."

¹⁰ 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.

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