



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

June 30, 2020 Government Records Council Meeting

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

Complaint No. 2018-185

v.
Township of Shrewsbury (Monmouth)
Custodian of Record

At the June 30, 2020 public meeting, the Government Records Council (“Council”) considered the June 23, 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 was under no obligation to obtain and disclose records created by the New Jersey State Police resulting from law enforcement activities within the Township of Shrewsbury. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 38-39 (App. Div. 2005); N.J.S.A. 53:2-1. Additionally, the Custodian was under no obligation to obtain and disclose records located at the Red Bank Borough Municipal Court, as OPRA does not apply to the Judiciary. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-7(g). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.
2. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian’s conduct. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Complainant failed to achieve the relief sought in his Denial of Access Complaint. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney’s fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk’s Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.



Final Decision Rendered by the
Government Records Council
On The 30th Day of June 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 2, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 30, 2020 Council Meeting**

**Rotimi Owoh, Esq. (On Behalf of¹
African American Data & Research Institute)
Complainant**

GRC Complaint No. 2018-185

v.

**Township of Shrewsbury (Monmouth)²
Custodial Agency**

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

1. Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) complaints prepared and filed by the Police Department from January 2016 through present.
2. Drug possession complaints prepared and filed by the Police Department from January 2016 through present.
3. Police Department’s “Arrest Listings” from January 2016 through present.
4. Drug paraphernalia complaints and summonses prepared by the Police Department from January 2016 through present.

Custodian of Record: Teri Giercyk
Request Received by Custodian: July 19, 2018
Response Made by Custodian: July 19, 2018
GRC Complaint Received: August 16, 2018

Background³

Request and Response:

On July 19, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On the same day, the Custodian responded in writing stating that the Township of Shrewsbury (“Township”) did not have a police department. The Custodian stated that she believed the Complainant needed to contact Shrewsbury Borough instead.

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

² Represented by Gene J. Anthony of The Law Offices of Gene J. Anthony (Eatontown, NJ).

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

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Denial of Access Complaint:

On August 16, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that as of August 15, 2018, the Custodian has not provided any responsive records or requested an extension of time to respond. The Complainant requested that the Council find that the Custodian violated OPRA in accordance with Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012). The Complainant also requested that the Council award him counsel fees.

Additional Correspondence:

On August 16, 2018, the Custodian responded to the Complainant’s filing. The Custodian stated that the Township did not have a police department and was covered by the New Jersey State Police (“NJSP”). The Custodian stated that she did not deny the Complainant’s request, and he should contact NJSP to obtain the records. The Custodian stated that the Township did not have the requested records.

That same day, the Complainant responded to the Custodian stating that the complaint would not be withdrawn, and she should contact NJSP to obtain the responsive records. The Custodian stated that NJSP acted as the Custodian’s agent since the Township did not have a police department.

Statement of Information:

On August 31, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 19, 2018. The Custodian certified that no search was conducted since the Township did not have a police department. The Custodian certified that she responded that same day denying the OPRA request and directing the Complainant to Shrewsbury Borough.

The Custodian certified that the Township did not have a police department and that NJSP handled all law enforcement matters. The Custodian also certified that the Red Bank Borough Municipal Court (“Red Bank Court”) handled the adjudication of all complaints for the Township.

The Custodian certified that no responsive records existed, and therefore did not unlawfully deny access to the Complainant request. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep’t of Educ., GRC Complaint No., 2005-49 (July 2005). The Custodian also argued that she was not under any obligation to provide records that did not exist pursuant to MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005). See also Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The Custodian also asserted that the requested records constituted criminal investigatory records under OPRA and therefore exempt from access. N.J.S.A. 47:1A-1.1; Harvey v. N.J. State

Police, GRC Complaint No. 2004-65 (June 2004); Janezcko v. N.J. Dep't of Law & Public Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).

Additional Submissions:

On September 3, 2018, the Complainant submitted a brief in response to the Custodian's SOI. The Complainant reiterated his Denial of Access Complaint argument that the Custodian violated OPRA pursuant to Michalak, GRC 2010-220. See also Burnett, 415 N.J. Super. 506; Meysers v. Borough of Fair Lawn, GRC Complaint No. 2005-127 (December 2005). The Complainant further argued that the Custodian violated OPRA by not requesting an extension of time with the allotted seven (7) business days.

The Complainant argued that the Council already decided that summonses and complaints were subject to disclosure. Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004). The Complainant further argued that the Township's obligation to disclose responsive records was not diminished simply because Judiciary also made them available to the public. See Keddie v. Rutgers, 148 N.J. 36, 52 (1997). The Complainant finally asserted that the GRC should award him counsel fees as a prevailing party. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006).

On September 11, 2018, the Custodian submitted a reply to the Complainant's brief. The Custodian reiterated that the Township did not have a police department, nor did the Township have a Shared Services Agreement with another municipality. The Custodian asserted that the Township was under NJSP's jurisdiction but did not have a written agreement for disclosure of information. The Custodian therefore argued that the Township could not disclosure records which did not exist in its custody. MAG, 375 N.J. Super. 534.

The Custodian asserted that the Complainant's reliance on Keddie was misplaced, as the Township did not have departments or agreements with other agencies that would allow it to receive the responsive records. 148 N.J. 36. The Custodian asserted that the appropriate agency was NJSP, as the Township was in no better position to access the records than the Complainant. The Custodian also argued that the Complainant was not entitled to counsel fees when seeking records from the wrong public entity and when said entity did not possess the responsive records.

On October 7, 2018, the Complainant responded to the Custodian asserting that pursuant to Burnett, 415 N.J. Super. 506, the Township was obligated to obtain the complaints and summonses from either NJSP's barracks or the Township's prosecutor. The Complainant argued that NJSP has an agency relationship with the Township under N.J.S.A. 53:2-1. The Complainant argued that the Township had a municipal court⁴ and NJSP officers required the services of the Township's prosecutor to adjudicate matters within the Township's jurisdiction.

The Complainant further asserted that municipalities were required to retain summonses and complaints for at least fifteen (15) years if part of a "Municipal Prosecutor's Case File." The Complainant argued that because the Township's prosecutor was an employee, their records were

⁴ The Complainant included an excerpted list of New Jersey State municipal courts, and highlighted "Shrewsbury Twp. Municipal Court" therein.
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subject to access under OPRA and should have been disclosed accordingly. The Complainant asserted that this requirement was consistent with court decisions where defendants argued that a requestor was required to obtain records from the courts. AADARI v. Woodbridge Twp., Docket No. MID-L-2052-18 (Law Div. May 12, 2018). The Complainant asserted that if the responsive records were in storage or otherwise unavailable, the Custodian was obligated to extend the response time frame but failed to do so. N.J.S.A. 47:1A-5(i).

The Complainant also asserted that based upon his experience, DUI/DWI or drug possession charges normally included sample testing by NJSP. The Complainant alleged that this testing averaged between three (3) and six (6) months. The Complainant asserted that the Township should have provided the Complainant copies of complaints and summonses within the prosecutor's control while the samples were being tested. The Complainant asserted that to the contrary, the Custodian failed to disclose any records as of the date of his letter brief.

The Complainant finally contended that based on the forgoing, the Council should order Township to disclose to him the responsive records. The Complainant further asserted that the Council should award him prevailing party attorney's fees. Teeters, 387 N.J. Super. 423.

On October 25, 2018, the Custodian submitted a response to the Complainant disputing the assertion that the Township had a municipal court and prosecutor. The Custodian asserted that the Township had neither and instead had a "Municipal Service Agreement" with the Borough of Red Bank for court services. The Custodian asserted that all actions taken by NJSP within the Township were filed and heard by the Red Bank Court, prosecuted by the Red Bank Municipal Prosecutor, and defended by the Red Bank Public Defender. The Custodian maintained that the appropriate forum to submit the instant OPRA request would be the Borough of Red Bank or NJSP. The Custodian further argued that the retention schedule cited by the Complainant applied to the Borough of Red Bank and not the Township.

The Custodian asserted that the Complainant's evidence indicating that the Township had a municipal court also noted its address as 90 Monmouth Street, Red Bank, N.J. The Custodian asserted that the list merely referenced the venue which hears matters occurring within the Township's jurisdiction.

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.

In Burnett, 415 N.J. Super. 506, the Appellate Division determined that the defendant was required to obtain settlement agreements from its insurance broker. The court's decision largely rested on the fact that there was no question that the broker was working on behalf of the defendant

to execute settlement agreements. The court noted that it previously held that although a third party, such as insurance broker or outside counsel, may execute settlement agreements, “they nonetheless bind the county as principal, and the agreements are made on its behalf.” Id. at 513. In determining that the defendant had an obligation to obtain responsive records from the insurance broker, the court distinguished Bent, 381 N.J. Super. at 38-39 from the facts before it. The court reasoned that:

In Bent, the requester sought records and information regarding a criminal investigation of his credit card activities conducted jointly by the Stafford Township Police Department [(“STPD”)], the United States Attorney for New Jersey and a special agent of the Internal Revenue Service. As part of his request, Bent sought “discrete records of the 1992 criminal investigation conducted by the STPD,” which were fully disclosed. Id. at 38. Additionally, he sought a “[c]opy of contact memos, chain of custody for items removed or turned over to third parties of signed Grand Jury reports and recommendations.” Bent v. Stafford Twp. Police Dept., GRC 2004-78, final decision (October 14, 2004). Affirming the determination of the [GRC], we stated: “to the extent Bent's request was for records that either did not exist or were not in the custodian's possession, there was, of necessity, no denial of access at all.” Bent, *supra*, 381 N.J. Super. at 38 . . . We continued by stating:

“Of course, even if the requested documents did exist, the custodian was under no obligation to search for them beyond the township's files. OPRA applies solely to documents ‘made, maintained or kept on file in the course of [a public agency's] official business,’ as well as any document ‘received in the course of [the agency's] official business.’ N.J.S.A. 47:1A-1.1. Contrary to Bent's assertion, although OPRA mandates that ‘all government records . . . be subject to public access unless exempt,’ the statute itself neither specifies nor directs the type of record that is to be ‘made, maintained or kept on file.’ In fact, in interpreting OPRA's predecessor statute, the Right to Know Law, we found no requirement in the law concerning ‘the making, maintaining or keeping on file the results of an investigation by a law enforcement official or agency into the alleged commission of a criminal offense. . . Thus, even if the requested documents did exist in the files of outside agencies, Bent has made no showing that they were, by law, required to be ‘made, maintained or kept on file’ by the custodian so as to justify any relief or remedy under OPRA. N.J.S.A. 47:1A-1.1.”

[T]he circumstances presented in Bent [are] far removed from those existing in the present matter because, as we have previously concluded, the settlement agreements at issue here were “made” by or on behalf of the Board in the course of its official business. Were we to conclude otherwise, a governmental agency seeking to protect its records from scrutiny could simply delegate their creation to third parties or relinquish possession to such parties, thereby thwarting the policy of transparency that underlies OPRA. N.J.S.A. 47:1A-1.

[Id. at 516-517.]

The Council subsequently expanded the court's holding in Burnett to agencies entering into a shared services agreement. See Michalak, GRC 2010-220. However, the Council took a different approach where the evidence did not support a custodian's obligation to obtain records. See Hittinger v. N.J. Transit, GRC Complaint No. 2013-324 (July 2014) (holding that the custodian was not required to obtain contracts from an outside vendor because the vendor maintained sole control over those documents).

Also, it must be noted that NJSP's ability to patrol within municipal limits is set forth in N.J.S.A. 53:2-1:

The members of the State Police shall be subject to the call of the Governor. They shall be peace officers of the State, *shall primarily be employed in furnishing adequate police protection to the inhabitants of rural sections*, shall give first aid to the injured and succor the helpless, and shall have in general the same powers and authority as are conferred by law upon police officers and constables.

They shall have power to prevent crime, to pursue and apprehend offenders and to obtain legal evidence necessary to insure the conviction of such offenders in the courts. They shall have power to execute any lawful warrant or order of arrest issued against any person, and to make arrests without warrant for violations of the law committed in their presence, and for felonies committed the same as are or may be authorized by law for other peace officers.

[Id. (emphasis added).]

In the matter before the Council, the Complainant sought access to summonses and complaints for DWI/DUI and drug offenses, as well as a Township arrest listing. On the basis that the Township did not have a police department, the Custodian denied access to the OPRA request and directed the Complainant to Shrewsbury Borough, which had a police department. This complaint ensued, wherein the Complainant contended that the Custodian had an obligation to obtain and disclose the responsive records under Burnett and Michalak, GRC 2010-220. In the SOI, the Custodian maintained the position that she was under no obligation to obtain and disclose records the Township did not possess and had no authority to compel NJSP to turn over the requested records. In response to the SOI, the Complainant argued that the Custodian had an obligation to contact NJSP or the Township's municipal prosecutor to obtain responsive records.

The crux of this complaint is whether the Custodian had an obligation to contact either NJSP or the Township's municipal prosecutor to obtain records submitted to that agency by NJSP as part of their patrol coverage of the Township. Upon reviewing this issue closely, the facts of this complaint depart from Burnett and Michalak, GRC 2010-220.

First, in contrast to Michalak, GRC 2010-220, there is no evidence of any contractual or shared services-type agreement between the Township and NJSP. Instead, N.J.S.A. 53:2-1 grants NJSP the ability to patrol certain areas as it deems necessary to ensure adequate police protection.

Thus, in the absence of a shared services agreement, there is no evidence supporting that NJSP is making or maintaining summons, complaints, or arrest listings on behalf of the Township. Additionally, there is similarly no evidence in the record to support that Borough of Red Bank was providing police services to the Township through a shared services agreement.

Second, there is no evidence to suggest that NJSP was making or maintaining records on behalf of the Township. Burnett, 415 N.J. Super. at 516-517. Therefore, the relationship between NJSP and the Township is not like the relationships between the parties in Burnett and Michalak. Specifically, the NJSP was neither a third-party vendor for the Township, nor had it entered into a shared services agreement with the Township for its police services. For this reason, the GRC concludes that the Township is in no way involved in making, maintaining, or submitting the records sought here.

Instead, the facts here are more closely aligned with those in Bent. Specifically, the evidence of record supports that the Township and NJSP are separate public agencies operating within the State. Further, there is no evidence supporting that the Township has any control over NJSP's operations within its municipal limits. Instead, NJSP provides law enforcement to the area and operates within its capacity as provided in N.J.S.A. 53:2-1. Further, that statute does not include any requirement that NJSP provide law enforcement records to a municipality wherein it has assumed full law enforcement duties. For these reasons, the GRC is persuaded that the Custodian was not required to contact other agencies to obtain records that were clearly beyond the Township's own files. Bent, 381 N.J. Super. at 38.

Furthermore, contrary to the Complainant's court assertions, the Custodian certified that the Township did not possess its own court, nor did the Township employ a prosecutor, public defender, or judge. Although the Complainant relied upon a list of municipal courts identifying a "Shrewsbury Twp. Municipal Court," the court's address is the same as the Red Bank Court, located in the Borough of Red Bank. This corroborates the Custodian's certification that the Red Bank Court adjudicated all matters occurring within the Township, and that the listing merely denoted the venue for matters occurring within the Township rather than to prove the existence of a separate court. Nevertheless, while it is evident that the Township was sharing services with the Borough of Red Bank for court services, OPRA does not apply to the Judiciary. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-7(g).

Accordingly, the Custodian was under no obligation to obtain and disclose records created by the NJSP resulting from law enforcement activities within the Township. Bent, 381 N.J. Super. 30; N.J.S.A. 53:2-1. Additionally, the Custodian was under no obligation to obtain and disclose records located at the Red Bank Court, as OPRA does not apply to the Judiciary. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-7(g). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.

Prevailing Party Attorney's Fees

OPRA provides that:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian's decision by filing an action in Superior Court . . . ; or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

[N.J.S.A. 47:1A-6.]

In Teeters v. DYFS, 387 N.J. Super. 423, the Appellate Division held that a complainant is a “prevailing party” if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct. Id. at 432. Additionally, the court held that attorney’s fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

Additionally, the New Jersey Supreme Court has ruled on the issue of “prevailing party” attorney’s fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, “which posits that a plaintiff is a ‘prevailing party’ if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant’s conduct”(quoting Buckhannon Bd. & Care Home v. West Virginia Dep’t of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court held that the phrase “prevailing party” is a legal term of art that refers to a “party in whose favor a judgment is rendered.” Id. at 603 (quoting Black’s Law Dictionary 1145 (7th ed. 1999)). The Supreme Court rejected the catalyst theory as a basis for prevailing party attorney fees, in part because “[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties” Id. at 605, 121 S. Ct. at 1840, 149 L. Ed. 2d at 863. Further, the Supreme Court expressed concern that the catalyst theory would spawn extra litigation over attorney's fees. Id. at 609, 121 S. Ct. at 1843, 149 L. Ed. 2d at 866.

However, the Court noted in Mason that Buckhannon is binding only when counsel fee provisions under federal statutes are at issue. 196 N.J. at 72, citing Teeters, 387 N.J. Super. at 429; see, e.g., Baer v. Klugholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). “But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” 196 N.J. at 73 (citations omitted).

The Mason Court accepted the application of the catalyst theory within the context of OPRA, stating that:

OPRA itself contains broader language on attorney's fees than the former RTKL did. OPRA provides that “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.” N.J.S.A. 47:1A-6. Under the prior RTKL, “[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney's fee not to exceed \$500.00.”

N.J.S.A. 47:1A-4 (repealed 2002). The Legislature's revisions therefore: (1) mandate, rather than permit, an award of attorney's fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

[196 N.J. at 73-76.]

The Court in Mason, further held that:

[R]equestors are entitled to attorney's fees under OPRA, absent a judgment or an enforceable consent decree, when they can demonstrate (1) "a factual causal nexus between plaintiff's litigation and the relief ultimately achieved"; and (2) "that the relief ultimately secured by plaintiffs had a basis in law." Singer v. State, 95 N.J. 487, 495, cert. denied, New Jersey v. Singer, 469 U.S. 832 (1984).

[Id. at 76.]

The Complainant filed the instant complaint requesting that the GRC require the Custodian to obtain and disclose the requested records to him. However, the evidence of record indicates that the Custodian was under no obligation to obtain and disclose said records. Bent, 318 N.J. Super. 30. Thus, the Complainant has not achieved the desired result and it not a prevailing party in this complaint.

Therefore, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters, 387 N.J. Super. 432. Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. 51. Specifically, the Complainant failed to achieve the relief sought in his Denial of Access Complaint. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian was under no obligation to obtain and disclose records created by the New Jersey State Police resulting from law enforcement activities within the Township of Shrewsbury. Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 38-39 (App. Div. 2005); N.J.S.A. 53:2-1. Additionally, the Custodian was under no obligation to obtain and disclose records located at the Red Bank Borough Municipal Court, as OPRA does not apply to the Judiciary. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-7(g). Thus, the Custodian lawfully denied access to the subject OPRA request. N.J.S.A. 47:1A-6.
2. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006). Additionally, no factual causal nexus

exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008). Specifically, the Complainant failed to achieve the relief sought in his Denial of Access Complaint. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. 432, and Mason, 196 N.J. 51.

Prepared By: Samuel A. Rosado
Staff Attorney

June 23, 2020