



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

January 25, 2022 Government Records Council Meeting

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

Complaint No. 2019-32

v.

Clinton Township Police Department (Hunterdon)
Custodian of Record

At the January 25, 2022 public meeting, the Government Records Council (“Council”) considered the January 18, 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 this complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant’s Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. 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 25th Day of January 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: January 27, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Prevailing Party Attorney's Fees
**Supplemental Findings and Recommendations of the Executive Director
January 25, 2022 Council Meeting**

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

GRC Complaint No. 2019-32

v.

**Clinton Township Police Department (Hunterdon)²
Custodial Agency**

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

1. Complaints, tickets, and summonses relating to Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) incidents that occurred within your jurisdiction from January 2018 through January 2019.
2. Complaints, tickets, and summonses relating to drug possession and drug paraphernalia incidents that occurred within your jurisdiction from January 2018 through January 2019.
3. “Arrest Listings” from January 2018 through January 2019.
4. Criminal complaints and summonses relating to drug possession and drug paraphernalia incidents that occurred within your jurisdiction from January 2018 through January 2019.

Custodian of Record: Carla Conner

Request Received by Custodian: January 31, 2019

Response Made by Custodian: January 31, 2019

GRC Complaint Received: February 13, 2019

Background

September 28, 2021 Council Meeting:

At its September 28, 2021 public meeting, the Council considered the September 21, 2021 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 Complainant’s January 31, 2019 OPRA request seeking arrest listings, complaints, summonses, and tickets was not overly broad. Rather, the request sought specifically

¹ No legal representation listed on record.

² Represented by Lucille E. Davy, Esq. and Trishka W. Cecil, Esq., of Mason, Griffin & Pierson, P.C. (Princeton, NJ).

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

identifiable records and would not cause the Custodian to conduct research to process. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). Thus, the Custodian unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. However, the Council declines to order disclosure since the evidence of record demonstrates that responsive records were provided to the Complainant on March 4, 2019 and March 11, 2019.

2. The Custodian unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. However, the Custodian ultimately disclosed responsive records after the instant complaint was filed. 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. 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. 2006). 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 Custodian provided the responsive records after the instant complaint was filed. 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. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Procedural History:

On September 29, 2021, the Council distributed its Interim Order to all parties. On November 3, 2021, the Government Records Council ("GRC") advised the parties that the fee agreement time frame expired. The GRC further advised that the Complainant's Counsel had twenty (20) business days to submit a fee application. On November 5, 2021, the Complainant's Counsel responded to the GRC requesting an additional thirty (30) days to file for counsel fees. The GRC responded to the Complainant's Counsel granting an additional twenty (20) business days to submit a fee application.

On December 8, 2021, Complainant's Counsel notified the GRC that a settlement had been reached between the parties, with formal approval to take place on December 15, 2021. On December 16, 2021, the GRC inquired as to whether the Township formally approved the settlement. That same day, Complainant's Counsel responded to the GRC stating that he was informed that the settlement was approved.

Analysis

Compliance

At its September 28, 2021 meeting, the Council ordered the parties to "confer in an effort to decide the amount of reasonable attorney's fees" and notify the GRC of any fee agreement. Further, the Council ordered that, should the parties not reach an agreement, the Complainant's Counsel "shall submit a fee application . . . in accordance with N.J.A.C. 5:105-2.13." On September 29, 2021, the Council distributed its Interim Order to all parties, providing the parties twenty (20) business days to reach a fee agreement. Thus, the parties were required to notify the GRC of any agreement by October 28, 2021.

On November 3, 2021, following the expiration of the time frame to reach a settlement, the GRC advised the parties that Complainant's Counsel had twenty (20) business days, or until November 30, 2021 to submit a fee application in accordance with N.J.A.C. 5:105-2.13. On November 5, 2021, Complainant's Counsel requested an additional thirty (30) days to submit a fee application. The GRC granted Complainant's Counsel an additional twenty (20) business days, or until December 29, 2021, to submit a fee application. On December 8, 2021, Complainant's Counsel notified the GRC that the parties have settled the issue of attorney's fees and that formal approval would take place on December 15, 2021. On December 16, 2021, Complainant's Counsel confirmed that the Township approved the settlement.

Accordingly, the Council should dismiss the complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant's Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Council dismiss this complaint because the parties have agreed to a prevailing party fee amount, thereby negating the need for Complainant's Counsel to submit a fee application in accordance with N.J.A.C. 5:105-2.13. Therefore, no further adjudication is required.

Prepared By: Samuel A. Rosado
Staff Attorney

January 18, 2022



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 28, 2021 Government Records Council Meeting

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

Complaint No. 2019-32

v.

Clinton Township Police Department (Hunterdon)
Custodian of Record

At the September 28, 2021 public meeting, the Government Records Council (“Council”) considered the September 21, 2021 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 Complainant’s January 31, 2019 OPRA request seeking arrest listings, complaints, summonses, and tickets was not overly broad. Rather, the request sought specifically identifiable records and would not cause the Custodian to conduct research to process. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). Thus, the Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. However, the Council declines to order disclosure since the evidence of record demonstrates that responsive records were provided to the Complainant on March 4, 2019 and March 11, 2019.
2. The Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. However, the Custodian ultimately disclosed responsive records after the instant complaint was filed. 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. 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. 2006). 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 Custodian provided the responsive records

after the instant complaint was filed. 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. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Interim Order Rendered by the
Government Records Council
On The 28th Day of September 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: September 29, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
September 28, 2021 Council Meeting**

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

GRC Complaint No. 2019-32

v.

**Clinton Township Police Department (Hunterdon)²
Custodial Agency**

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

1. Complaints, tickets, and summonses relating to Driving While Intoxicated/Driving Under the Influence (“DWI/DUI”) incidents that occurred within your jurisdiction from January 2018 through January 2019.
2. Complaints, tickets, and summonses relating to drug possession and drug paraphernalia incidents that occurred within your jurisdiction from January 2018 through January 2019.
3. “Arrest Listings” from January 2018 through January 2019.
4. Criminal complaints and summonses relating to drug possession and drug paraphernalia incidents that occurred within your jurisdiction from January 2018 through January 2019.

Custodian of Record: Carla Conner

Request Received by Custodian: January 31, 2019

Response Made by Custodian: January 31, 2019

GRC Complaint Received: February 13, 2019

Background⁴

Request and Response:

On January 31, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. That same day, Lt. Ryan Melsky of the Clinton Township Police Department (“CPD”) responded in writing on the Custodian’s behalf stating that the Complainant’s request required research and was therefore denied. Lt.

¹ No legal representation listed on record.

² Represented by Lucille E. Davy, Esq. and Trishka W. Cecil, Esq., of Mason, Griffin & Pierson, P.C. (Princeton, NJ).

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

⁴ 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 & Research Institute) v. Clinton Township Police Department (Hunterdon), 2019-32 – Findings and Recommendations of the Executive Director

Melsky also stated that if the Complainant requested reports of specific incidents, he needed to provide approximate dates and locations so they can be located within CPD's system.

On February 2, 2019, the Complainant responded to Lt. Melsky requesting that he reconsider the denial of access.

Denial of Access Complaint:

On February 13, 2019, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he was denied access to his request on January 31, 2019. The Complainant contended that he never received a response to his request that Lt. Melsky reconsider the denial of access.

The Complainant argued that his request was valid pursuant to Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). The Complainant requested that the GRC compel compliance with the order and to award counsel fees.

Additional Response:

On March 4, 2019, Custodian's Counsel e-mailed the Complainant stating that the Township of Clinton ("Township") and CPD misunderstood his OPRA request. Counsel added that copies of the arrest listings responsive to item No. 3 were attached to the e-mail with redactions to juvenile information. Regarding the records responsive to the remaining items, Counsel stated that CPD did not have electronic copies of the records and that obtaining the physical copies from the 300 individual case files would be a time-consuming and lengthy process. Counsel added that if the Complainant still desired copies of the outstanding records, additional time was needed to process and deliver. Counsel also stated that a special service charge may be imposed.

Statement of Information:

On March 11, 2019, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on January 31, 2019. The Custodian certified that she forwarded the request to Lt. Melsky of the CPD. The Custodian certified that Lt. Melsky responded to the Complainant on January 31, 2019, stating that fulfilling the request would require research.

The Custodian certified that that upon receiving the instant complaint, she reached out to the Township Attorney for consultation, who informed that the requested records did not require research and began locating the records. The Custodian then certified that on March 4, 2019, the Township provided records responsive to item No. 3, and requested additional time to provide the remaining records. The Custodian certified that the remaining records were provided on March 11, 2019, in conjunction with the SOI.

Additional Submissions:

On March 12, 2019, the Complainant submitted a brief in response to the SOI. The

Complainant stated that the only outstanding issue was the award of counsel fees. The Complainant argued that the instant complaint was the catalyst which caused the Township to agree to make the requested records available. Thus, the Complainant argued that the GRC should award counsel fees to the Complainant pursuant to Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006).

Analysis

Validity of Request

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.”* N.J.S.A. 47:1A-1.

[MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).]

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);⁵ N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all” requests seeking “records” generically, *etc.*) and requires

⁵ Affirmed on appeal from Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004). Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. Clinton Township Police Department (Hunterdon), 2019-32 – Findings and Recommendations of the Executive Director

a custodian to conduct research. MAG, 375 N.J. Super. at 534; Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). The second is those requests seeking information or asking questions. See *e.g.* Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See *e.g.* Naples v. N.J. Motor Vehicle Comm'n, GRC Complaint No. 2008-97 (December 2008).

The Council addressed the search/research question in Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). There, the Council held that pursuant to MAG, a custodian is obligated to search his or her files to find identifiable government records listed in a requestor's OPRA request. The complainant in Donato requested all motor vehicle accident reports from September 5, 2005 to September 15, 2005. The custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

Pursuant to [MAG], the Custodian is obligated to search her files to find the identifiable government records listed in the Complainant's OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to research her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word search is defined as "to go or look through carefully in order to find something missing or lost." The word research, on the other hand, means "a close and careful study to find new facts or information." (Footnotes omitted.)

[Id.]

Here, the Complainant's OPRA request sought DWI/DUI, drug possession, and drug paraphernalia complaints, summonses, and tickets over a one (1) year period. The Complainant also sought "arrest listings" over a one (1) year period. Lt. Melsky asserted that the records required research and tried to seek clarification from the Complainant.

Upon review, the GRC is satisfied that the Complainant's OPRA request was valid. The request specifically identified government records spanning a definitive period: complaints, summonses, tickets, and arrest listings. Furthermore, the Custodian was able to conduct an initial search and locate 300 case files that may contain responsive records. Although the universe of responsive records may be voluminous, that does not always necessarily equate to an invalid OPRA request. See Chester v. Pleasantville Hous. Auth. (Atlantic), GRC Complaint No. 2015-50 (Interim Order dated March 28, 2017).

Accordingly, the Complainant's January 31, 2019 OPRA request seeking arrest listings, complaints, summonses, and tickets was not overly broad. Rather, the request sought specifically identifiable records and would not cause the Custodian to conduct research to process. MAG, 375 N.J. Super. at 549; Bent, 381 N.J. Super. at 37; N.J. Builders Ass'n, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Donato, GRC 2005-182. Thus, the Custodian unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. However, the Council declines to order disclosure since the evidence of record demonstrates that responsive records were provided to the Complainant on March 4, 2019 and March 11, 2019.

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 matter before the Council, the Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. However, the Custodian ultimately disclosed responsive records after the instant complaint was filed. 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.]

In Teeters, 387 N.J. Super. at 432, 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. Klagholz, 346 N.J. Super. 79 (App. Div. 2001) (applying Buckhannon to the federal Individuals with Disabilities Education Act), certif. denied, 174 N.J. 193 (2002). “But in interpreting New Jersey law, we look to state law precedent and the specific state statute before us. When appropriate, we depart from the reasoning of federal cases that interpret comparable federal statutes.” 196 N.J. at 73 (citations omitted).

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

OPRA itself contains broader language on attorney’s fees than the former RTKL did. OPRA provides that “[a] requestor who prevails in any proceeding shall be entitled to a reasonable attorney’s fee.” N.J.S.A. 47:1A-6. Under the prior RTKL, “[a] plaintiff in whose favor such an order [requiring access to public records] issues . . . may be awarded a reasonable attorney’s fee not to exceed \$500.00.” N.J.S.A. 47:1A-4 (repealed 2002). The Legislature’s revisions therefore: (1) mandate, rather than permit, an award of attorney’s fees to a prevailing party; and (2) eliminate the \$500 cap on fees and permit a reasonable, and quite likely higher, fee award. Those changes expand counsel fee awards under OPRA.

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

The Court in Mason, further held that:

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

[Id. at 76.]

Here, the Complainant sought tickets, complaints and summonses prepared by CPD pertaining to drug paraphernalia, drug possession, and DUI/DWI offenses. The Complainant also sought arrest listings prepared by CPD. Lt. Melsky responded on behalf of the Custodian stating that the request required research and was therefore invalid. The Complainant then filed the instant complaint on February 13, 2019, asserting that his request did not require research. The Custodian thereafter provided responsive records on March 4, 2019 and March 11, 2019.

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. Although the Custodian reversed Lt. Melsky's initial denial of access, the reversal did not occur until after she received the instant complaint. 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.⁶

Therefore, 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 Custodian provided the responsive records after the instant complaint was filed. 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. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant's January 31, 2019 OPRA request seeking arrest listings, complaints,

⁶ 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).

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summons, and tickets was not overly broad. Rather, the request sought specifically identifiable records and would not cause the Custodian to conduct research to process. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007). Thus, the Custodian unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. However, the Council declines to order disclosure since the evidence of record demonstrates that responsive records were provided to the Complainant on March 4, 2019 and March 11, 2019.

2. The Custodian unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. However, the Custodian ultimately disclosed responsive records after the instant complaint was filed. 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. 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. 2006). 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 Custodian provided the responsive records after the instant complaint was filed. 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. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Prepared By: Samuel A. Rosado
Staff Attorney

September 21, 2021