



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. 2020-15

v.

Township of Union (Union)
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. 2020-15

v.

**Township of Union (Union)²
Custodial Agency**

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

1. The General Order for your Police Department.
2. Records showing the name, rank, and date of hire of each employee in your Police Department who has access to eCDR. For clarification, we need to know how many members of your Police Department have access to eCDR.
3. Records showing the name, rank, and date of hire of each employee in your Police Department who has access to ATS/ACS. For clarification, we need to know how many members of your Police Department have access to ATS/ACS.

Custodian of Record: Eileen Birch
Request Received by Custodian: January 7, 2020
Response Made by Custodian: January 14, 2020
GRC Complaint Received: January 22, 2020

Background

December 14, 2021 Council Meeting:

At its December 14, 2021 public meeting, the Council considered the December 7, 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 complied with the Council's April 27, 2021 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

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

² Represented by Victoria A. Lucido, Esq. of Aloia Law Firm, LLC (Bloomfield, NJ).

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

2. The Custodian unlawfully denied access to the requested personnel information. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to the other request items and complied with the Council’s April 27, 2021 Interim Order by providing the Complainant with the requested information. 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. Pursuant to the Council’s April 27, 2021 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. 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 was ordered to produce the requested personnel information. 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. at 432, and Mason, 196 N.J. at 76. **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 December 15, 2021, the Council distributed its Interim Order to all parties. On January 12, 2022, the Complainant’s Counsel notified the GRC that the parties have resolved the issue of counsel fees per the Interim Order. On January 14, 2021, the GRC e-mailed the parties, inquiring whether the resolution required formal approval from the Township of Union (“Township”). That same day, the Custodian’s Counsel responded to the GRC, stating that formal approval was not required.

Analysis

Compliance

At its December 14, 2021 meeting, the Council determined that the Complainant was a prevailing party entitled to an award of reasonable attorney’s fees. The Council thus ordered that 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 Council further ordered that the parties notify of any settlement prior to the expiration of the twenty (20) business day time frame. Finally, the Council ordered that, should the parties not reach an agreement, the Complainant’s Counsel

would be required to “submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.”

On December 15, 2021, the Council distributed its Interim Order to all parties; thus, the parties’ response was due by close of business on January 14, 2022. On January 12, 2022, Complainant’s Counsel notified the GRC that the parties resolved the issue of counsel fees. On January 14, 2022, the GRC asked the parties whether formal approval was necessary from the Township. That same day, Custodian’s Counsel confirmed that formal approval from the Township was not required.

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

December 14, 2021 Government Records Council Meeting

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

Complaint No. 2020-15

v.

Township of Union (Union)
Custodian of Record

At the December 14, 2021 public meeting, the Government Records Council (“Council”) considered the December 8, 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 complied with the Council’s April 27, 2021 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the requested personnel information. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to the other request items and complied with the Council’s April 27, 2021 Interim Order by providing the Complainant with the requested information. 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. Pursuant to the Council’s April 27, 2021 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. 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 was ordered to produce the requested personnel information. 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. at 432, and Mason, 196 N.J. at 76. **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 14th Day of December 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: December 15, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
December 14, 2021 Council Meeting**

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

GRC Complaint No. 2020-15

v.

**Township of Union (Union)²
Custodial Agency**

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

1. The General Order for your Police Department.
2. Records showing the name, rank, and date of hire of each employee in your Police Department who has access to eCDR. For clarification, we need to know how many members of your Police Department have access to eCDR.
3. Records showing the name, rank, and date of hire of each employee in your Police Department who has access to ATS/ACS. For clarification, we need to know how many members of your Police Department have access to ATS/ACS.

Custodian of Record: Eileen Birch
Request Received by Custodian: January 7, 2020
Response Made by Custodian: January 14, 2020
GRC Complaint Received: January 22, 2020

Background

April 27, 2021 Council Meeting:

At its April 27, 2021 public meeting, the Council considered the April 20, 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 Custodian lawfully denied access to the Complainant's January 7, 2020 OPRA request item No. 1 seeking Union Police Department's "General Order." N.J.S.A. 47:1A-6. The Complainant's request and subsequent clarification failed to provide sufficiently identifiable information for the Custodian to conduct a search for

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

² Represented by Victoria A. Lucido, Esq. of Aloia Law Firm, LLC (Bloomfield, NJ).

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

- responsive records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012); Love v. Spotswood Police Dep't (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015).
2. The Complainant's OPRA request item No. 2 seeking the "name, rank, and date of hire" of Union Police Department employees who have access to eCDR is invalid because it required research. The Custodian had no legal duty to research her files, or cause research, to locate records potentially responsive to the request. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (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); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-37 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012). Thus, the Custodian lawfully denied access to the subject request. N.J.S.A. 47:1A-6.
 3. The Custodian unlawfully denied access to the Complainant's OPRA request item No. 3 seeking disclosable personnel information. N.J.S.A. 47:1A-6. Because the Custodian was able to locate a list of Union Police Department employees with access to ATS/ACS, she must therefore provide the rank and date of hire of said employees. N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010).
 4. **The Custodian shall comply with conclusion No. 3 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 deliver⁴ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁵ to the Executive Director.⁶**
 5. 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.

⁴ 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.

⁵ "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."

⁶ 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.

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

Procedural History:

On April 28, 2021, the Council distributed its Interim Order to all parties. On May 4, 2021, the Custodian responded to the Council's Interim Order, providing the Complainant with the requested information via e-mail. The Custodian also provided certified confirmation of compliance to the Executive Director.

Analysis

Compliance

At its April 27, 2021 meeting, the Council ordered the Custodian to locate and provide the Complainant with the requested personnel information. The Council also ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On April 28, 2021, 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 May 5, 2021.

On May 4, 2021, the fourth (4th) business day after receipt of the Council's Order, the Custodian provided the Complainant with the requested information and submitted certified confirmation of compliance to the Executive Director.

Therefore, the Custodian complied with the Council's April 27, 2021 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.

Knowing & Willful

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

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must

have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

In the instant matter, the Custodian unlawfully denied access to the requested personnel information. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to the other request items and complied with the Council's April 27, 2021 Interim Order by providing the Complainant with the requested information. 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 v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Appellate Division held that a complainant is a "prevailing party" if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct. Id. at 432. Additionally, the court held that attorney's fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

Additionally, the New Jersey Supreme Court has ruled on the issue of "prevailing party" attorney's fees. In Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 71 (2008), the Court discussed the catalyst theory, "which posits that a plaintiff is a 'prevailing party' if it achieves the desired result because the lawsuit brought about a voluntary change in the defendant's conduct" (quoting Buckhannon Bd. & Care Home v. West Virginia Dep't of Health & Human Res., 532 U.S. 598, 131 S. Ct. 1835, 149 L. Ed. 2d 855 (2001)). In Buckhannon, the Supreme Court 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 requested the name, rank, and date of hire of each police department employee with access to eCDR and ACS/ATS. The Custodian responded in part by providing a list of employees with access to ACS/ATS. The Complainant filed the instant matter stating that the Custodian did not provide the requested personnel information required under N.J.S.A. 47:1A-10.

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 April 27, 2021 Interim Order, the Custodian was ordered to provide the requested personnel information of employees with access to ACS/ATS, 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.⁷

Therefore, pursuant to the Council's April 27, 2021 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 Custodian was ordered to produce the requested personnel information. 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. at 432, and Mason, 196 N.J. at 76. **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 Custodian complied with the Council's April 27, 2021 Interim Order because she responded in the prescribed time frame providing records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the requested personnel information. N.J.S.A. 47:1A-6. However, the Custodian lawfully denied access to the other request items and complied with the Council's April 27, 2021 Interim Order by providing the Complainant with the requested information. 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. Pursuant to the Council's April 27, 2021 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. 2006). Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately

⁷ 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).

achieved. Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51, 76 (2008). Specifically, the Custodian was ordered to produce the requested personnel information. 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. at 432, and Mason, 196 N.J. at 76. **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

December 8, 2021



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

April 27, 2021 Government Records Council Meeting

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

Complaint No. 2020-15

v.

Township of Union (Union)
Custodian of Record

At the April 27, 2021 public meeting, the Government Records Council (“Council”) considered the April 20, 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 Custodian lawfully denied access to the Complainant’s January 7, 2020 OPRA request item No. 1 seeking Union Police Department’s “General Order.” N.J.S.A. 47:1A-6. The Complainant’s request and subsequent clarification failed to provide sufficiently identifiable information for the Custodian to conduct a search for responsive records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012); Love v. Spotswood Police Dep’t (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015).
2. The Complainant’s OPRA request item No. 2 seeking the “name, rank, and date of hire” of Union Police Department employees who have access to eCDR is invalid because it required research. The Custodian had no legal duty to research her files, or cause research, to locate records potentially responsive to the request. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (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); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-37 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012). Thus, the Custodian lawfully denied access to the subject request. N.J.S.A. 47:1A-6.
3. The Custodian unlawfully denied access to the Complainant’s OPRA request item No. 3 seeking disclosable personnel information. N.J.S.A. 47:1A-6. Because the Custodian was able to locate a list of Union Police Department employees with access to ATS/ACS, she must therefore provide the rank and date of hire of said employees.

N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010).

4. **The Custodian shall comply with conclusion No. 3 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 certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**
5. 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.
6. The Council defers analysis of whether the Custodian is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 27th Day of April 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: April 28, 2021

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.

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
April 27, 2021 Council Meeting**

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

GRC Complaint No. 2020-15

v.

**Township of Union (Union)²
Custodial Agency**

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

1. The General Order for your Police Department.
2. Records showing the name, rank, and date of hire of each employee in your Police Department who has access to eCDR. For clarification, we need to know how many members of your Police Department have access to eCDR.
3. Records showing the name, rank, and date of hire of each employee in your Police Department who has access to ATS/ACS. For clarification, we need to know how many members of your Police Department have access to ATS/ACS.

Custodian of Record: Eileen Birch
Request Received by Custodian: January 7, 2020
Response Made by Custodian: January 14, 2020
GRC Complaint Received: January 22, 2020

Background⁴

Request and Response:

On January 7, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 14, 2020, the Custodian responded in writing stating that for item No. 1, the request failed to identify with specificity the government records sought beyond a generic description of a brand or type of order. Regarding item No. 2, the Custodian stated that no responsive records exist. In a subsequent e-mail, the Custodian stated that for item No. 2, she was not asserting that Union Police Department (“UPD”)

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

² Represented by Michael K. Belostock, Esq., of Aloia Law Firm, LLC (Bloomfield, 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. Township of Union (Union), 2020-15 – Findings and Recommendations of the Executive Director

officers did not have access to eCDR, but rather that no government record exists which lists the names of officers that have said access. Regarding item No. 3, the Custodian stated that no record exists containing the rank and date of hire for each UPD employee possessing access to ATS/ACS but attached a list of employees who have access to same. The Custodian stated that the username and passwords have been redacted for security reasons, as well as the names of court employees and Kean Police Department employees who have access to ATS/ACS.

On January 14, 2020, the Complainant replied to the Custodian stating that item No. 2's second sentence was meant to clarify why the records were being sought, and was not part of the actual request. The Complainant subsequently e-mailed the Custodian copies of documents entitled "General Order" from Eatontown Police Department ("EPD") and Millville Police Department ("MPD") as clarification for item No. 1. That same day, the Custodian responded stating that the attachments did not clarify which record the Complainant sought. The Complainant replied stating that the attachments were records responsive to item No. 1 that were provided by other police departments.

Denial of Access Complaint:

On January 22, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that he has not received responsive records to item No. 1 despite providing copies of general orders for other police departments as clarification.

The Complainant also asserted that he was denied access to item No. 2 in full, and partially denied access to item No. 3. The Complainant argued that other police departments had no issues providing records responsive to item Nos. 2 and 3, and both items were valid requests for personnel information under N.J.S.A. 47:1A-10. The Complainant requested that the GRC compel compliance with his OPRA request and to award counsel fees.

Statement of Information:

On February 10, 2020, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on January 7, 2020. The Custodian certified that her search included diligent discussions with UPD regarding whether responsive records existed. The Custodian certified that on January 14, 2020, she responded to the Complainant stating that request item No. 1 was invalid and requested clarification, and that no responsive record exists regarding item No. 2. The Custodian also stated that no responsive record existed containing the rank and date of hire for UPD employees with access to ATS/ACS, but provided a record containing the names of those employees with access.

The Custodian asserted that as a preliminary matter, the complaint should be dismissed because the Complainant did not provide a copy of the complaint to the Custodian as required under GRC regulations. The Custodian asserted that she received the complaint from the GRC on February 3, 2020. The Custodian noted that the Complainant's failure was inexcusable as he was a certified attorney at law and familiar with the GRC process.

Notwithstanding the above, the Custodian asserted that the matter should be dismissed on the merits. The Custodian argued that item No. 1 failed to specifically identify the record sought, and that the Township of Union (“Township”) did not possess any document identified as the “General Order” of the UPD. The Custodian also asserted that item No. 2 was not a document created, maintained, or stored by the Township, and did not meet the definition of a record under OPRA. See MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Twp. 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, 178 (App. Div. 2007); LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Fitch v. Monmouth Cnty. Prosecutor’s Office, GRC Complaint No. 2017-6 (March 2019).

Additional Submissions:

On February 11, 2020, the Complainant filed a letter brief in opposition to the Custodian’s SOI. Therein, the Complainant contended that eCDR was set up by the Attorney General pursuant to New Jersey’s bail reform law and mandated its use by all police departments in the State. The Complainant therefore asserted that it was impossible for UPD to generate complaints via eCDR if no employee or officer had access to eCDR. The Complainant argued that the Custodian violated OPRA by not providing the “name, rank, and date of hire of each employee” at UPD who has access to eCDR. The Complainant asserted that the language of the request was based upon N.J.S.A. 47:1A-10 pertaining to personnel records. Furthermore, the Complainant asserted that the Custodian’s response to item No. 3 failed to include the date of hire for UPD employees with access to ATS/ACS.

The Complainant also argued that in response to the Custodian’s request for clarification, he provided general orders of other police departments that were responsive to item No. 1. The Complainant argued that despite providing clarification, the Custodian failed to provide responsive records.

On March 5, 2020, the Custodian filed a reply with the GRC. The Custodian maintained that item No. 1 was invalid and failed to identify a specific government record. Additionally, the Custodian asserted that the Complainant failed to provide clarification. The Custodian further argued that item No. 2 was an improper request for information as it sought the number of officers who had access to eCDR. The Custodian also asserted that the Complainant was told that no responsive records exist containing the requested information.⁵

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

⁵ The Custodian did not address the Complainant’s argument that item No. 3 was partially denied. Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. Township of Union (Union), 2020-15 – Findings and Recommendations of the Executive Director

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. at 549 (emphasis added). 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).

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

In Donato, GRC 2005-182, 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.]

Item No. 1

In Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 508 (App. Div. 2010), the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of “[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.” The Appellate Division determined that the request sought a *specific type of document, although it did not specify a particular case to which such document pertained*, and was therefore not overly broad. Id. at 515-16 (emphasis added). Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012), found a request for the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information.

In Love v. Spotswood Police Dep’t (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015), the complainant sought “police reports and/or complaints signed against [Kristen Ellis].” The Council held that while the complainant’s request for “police reports” and “complaints” reasonably described the subject matter, the complainant failed to provide a specific date or range of dates within his request. Id. at 3. The Council therefore found that the complainant’s request was overly broad because a request for a specific type of document or subject matter must still be accompanied by a sufficient amount of identifying information. See Burke, 429 N.J. Super. at 176.

In the current matter, the Complainant’s OPRA request item No. 1 sought UPD’s “General Order.” The Custodian responded stating that the request item lacked specificity and requested clarification. The Complainant responded by providing copies of General Orders received from other police departments. The Custodian maintained that the copies did not clarify what record the Complainant sought.

Upon review, the GRC finds that the Custodian lawfully denied access to the Complainant’s request item No. 1. Although the Complainant provided the Custodian examples of General Orders received from other police departments, a review of same indicates that the records do not contain the same information. Notably, the examples provided by the Complainant were two (2) General Orders from EPD and another from MPD. The General Order from MPD and one order from EPD pertained to criminal case management, while the other EPD order pertained to records access and information technology security. Thus, not only do the contents of General Orders vary among police departments, departments such as EPD can have multiple General Orders. Therefore, the Complainant’s examples failed to provide sufficient identifying information. Burk, 429 N.J. Super. at 176; Love, GRC 2014-223.

Accordingly, the Custodian lawfully denied access to the Complainant's January 7, 2020 OPRA request item No. 1 seeking UPD's "General Order." N.J.S.A. 47:1A-6. The Complainant's request and subsequent clarification failed to provide sufficiently identifiable information for the Custodian to conduct a search for responsive records. MAG, 375 N.J. Super. at 546; Burke, 429 N.J. Super. at 176; Love, GRC 2015-223.

Item Nos. 2 & 3

Regarding requests for information, in LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant's request was a request for information, holding that "because request Item No. 2 of the Complainant's June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG] . . ." Id. at 6. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

Additionally, there are instances where a request can be specific enough to induce research, thus rendering it invalid. For instance, in Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012), the complainant submitted four (4) OPRA requests seeking copies of meeting minutes containing motions to approve other minutes. The Council, citing Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC Complaint No. 2008-258 (August 2009) and Ray v. Freedom Academy Charter Sch. (Camden), GRC Complaint No. 2009-185 (August 2010), determined that the requests were overly broad:

[S]aid requests do not specify the date or time frame of the minutes sought. Rather, the requests seek those minutes at which the UCBOE motioned to approve meeting minutes for four (4) other meetings. Similar to the facts of both Taylor and Ray, the requests herein *seek minutes that refer to a topic and would require the Custodian to research the UCBOE's meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant's requests* . . . because the Complainant's four (4) requests for minutes "that include a motion made by the Union City Board of Education to approve the minutes" from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant's requests are invalid under OPRA.

[Valdes, GRC 2011-147, *et seq.* (emphasis added) (citing N.J. Builders Ass'n, 390 N.J. Super. at 180; Bent, 381 N.J. Super. at 37; MAG, 375 N.J. Super. at 546; Schuler, GRC 2007-151; Donato, GRC 2005-182. See also Valdes v. Gov't Records Council, GRC Complaint No. 2013-278 (September 2014).]

In Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-37 (App. Div. 2015), the court's rationale of what amounted to research supports the Council's decision in Valdes. There, the court reasoned that the plaintiff's request:

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

[Id. at 237. See also Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub. LEXIS 2510 (App. Div. Dec. 10, 2019) (affirming Carter, GRC Complaint No. 2016-262 (August 2018)).]

However, regarding personnel records, OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor's Office, 206 N.J. 581, 594 (2011). These exceptions include “an individual’s name, title, position, salary, payroll record, length of service, date of separation and the reason therefore, and the amount and type of any pension received shall be government record.” N.J.S.A. 47:1A-10.

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156 *et seq.* (Interim Order dated June 29, 2010), the Council determined that “name, title, position, salary, payroll record and length of service” is information which is specifically considered to be a “government record” under N.J.S.A. 47:1A-10, and that “payroll records” must be disclosed pursuant to Jackson, GRC 2002-98. The Council thus held that the complainant’s March 25, 2009, request for “[t]he name, position, salary, payroll record and length of service for every Board/District employee who was employed in whole or part from January 1, 2008, to March 24, 2009” was a valid request pursuant to OPRA. Id. at 5. Additionally, prior GRC case law supports the disclosure of database information regarding personnel actions. See Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009). Further, the Council has previously required that responding to an OPRA request for personnel information requires a custodian provide the most comprehensive records containing the responsive information. Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2011-64 (Interim Order dated August 28, 2012).

In the current matter, the Complainant’s OPRA request item No. 2 sought “records showing name, rank, and date of hire of each employee in your police department who has access to eCDR.” The Custodian responded by denying access stating that no record exists containing that information. In the SOI and in an additional submission the Custodian maintained that no record exists, but also argued that the item No. 2 was improper and sought information, since the Complainant stated that he ultimately sought the number of UPD employees who have access to eCDR. MAG, 375 N.J. Super. at 546. In response, the Complainant asserted that the request item sought information required to be disclosed under N.J.S.A. 47:1A-10, and other departments have provided records without issue. Furthermore, the Complainant asserted that his clarification stating that he sought the number of UPD employees possessing access to eCDR was a not part of the request itself.

In reviewing the subject request, all arguments provided by the parties, and the case law relevant to invalid requests requiring research, the GRC is satisfied that the Custodian lawfully determined that the request was invalid. The GRC notes that the Complainant sought information identified as a “government record” under OPRA. Danis, GRC 2009-156, *et seq.* Thus, the request is valid to the extent that the Complainant sought identifiable information. However, the presence of identifiable “government records” within the subject request does not end the inquiry.

Rather, the Complainant’s request item adds an additional qualifier: UPD employees with access to eCDR. In contrast to request item No. 3, which will be addressed below, the Custodian certified that no record exists listing UPD employees with access to eCDR. Therefore, prior to providing the name, rank, and date of hire as required under N.J.S.A. 47:1A-10, the Custodian would first have to inquire and conduct research to determine which employees have access. Such acts are like the process determined to be research in Lagerkvist, 443 N.J. Super. at 236-37.

Accordingly, the Complainant’s OPRA request item No. 2 seeking the “name, rank, and date of hire” of UPD employees who have access to eCDR is invalid because it required research. The Custodian had no legal duty to research her files, or cause research, to locate records potentially responsive to the request. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; N.J. Builders, 390 N.J. Super. at 180; Lagerkvist, 443 N.J. Super. at 236-37; Schuler, GRC 2007-151; Donato, GRC 2005-182; Valdes, GRC 2011-147, *et seq.* Thus, the Custodian lawfully denied access to the subject request. N.J.S.A. 47:1A-6.

However, in response to the Complainant’s OPRA request item No. 3, the Custodian was able to locate and provide a list of UPD employees who have access to ATS/ACS. Thus, the Custodian was not required to conduct research prohibited under OPRA and Lagerkvist. Instead, using the located list, the Custodian could have provided the additional personnel information sought by the Complainant, namely the rank and date of hire. N.J.S.A. 47:1A-10. However, the Custodian only provided the list and failed to include the personnel information considered valid under Danis, GRC 2009-156.

Accordingly, the Custodian unlawfully denied access to the Complainant’s OPRA request item No. 3 seeking disclosable personnel information. N.J.S.A. 47:1A-6. Because the Custodian was able to locate a list of UPD employees with access to ATS/ACS, she must therefore provide the rank and date of hire of said employees. N.J.S.A. 47:1A-10; Danis, GRC 2009-156.

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 Custodian is a prevailing party pending the Custodian’s compliance with the Council’s Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian lawfully denied access to the Complainant's January 7, 2020 OPRA request item No. 1 seeking Union Police Department's "General Order." N.J.S.A. 47:1A-6. The Complainant's request and subsequent clarification failed to provide sufficiently identifiable information for the Custodian to conduct a search for responsive records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012); Love v. Spotswood Police Dep't (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015).
2. The Complainant's OPRA request item No. 2 seeking the "name, rank, and date of hire" of Union Police Department employees who have access to eCDR is invalid because it required research. The Custodian had no legal duty to research her files, or cause research, to locate records potentially responsive to the request. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (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); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-37 (App. Div. 2015); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (January 2007); Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012). Thus, the Custodian lawfully denied access to the subject request. N.J.S.A. 47:1A-6.
3. The Custodian unlawfully denied access to the Complainant's OPRA request item No. 3 seeking disclosable personnel information. N.J.S.A. 47:1A-6. Because the Custodian was able to locate a list of Union Police Department employees with access to ATS/ACS, she must therefore provide the rank and date of hire of said employees. N.J.S.A. 47:1A-10; Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated June 29, 2010).
4. **The Custodian shall comply with conclusion No. 3 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 deliver⁶**

⁶ 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.

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. Township of Union (Union), 2020-15 – Findings and Recommendations of the Executive Director

certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸

5. 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.
6. The Council defers analysis of whether the Custodian is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

April 20, 2021

⁷ "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."

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

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. Township of Union (Union), 2020-15 – Findings and Recommendations of the Executive Director