



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

November 9, 2021 Government Records Council Meeting

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

Complaint No. 2020-46

v.

Borough of Roselle (Union)
Custodian of Record

At the November 9, 2021 public meeting, the Government Records Council (“Council”) considered the October 26, 2021 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Council should 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 9th Day of November 2021

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: November 15, 2021



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Prevailing Party Attorney's Fees
**Supplemental Findings and Recommendations of the Executive Director
November 9, 2021 Council Meeting**

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

GRC Complaint No. 2020-46

v.

**Borough of Roselle (Union)²
Custodial Agency**

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

1. Driving Under the Influence/Driving While Intoxicated (“DUI/DWI”) summonses and complaints that were prepared by the Police Department from January 2019 to present.
2. Drug possession complaints and summonses prepared and filed by the Police Department from January 2019 through present.
3. Drug paraphernalia complaints and summonses prepared and filed by the Police Department from January 2019 through present.

Custodian of Record: Lydia Massey
Request Received by Custodian: December 26, 2019
Response Made by Custodian: January 29, 2020
GRC Complaint Received: February 24, 2020

Background

August 24, 2021 Council Meeting:

At its August 24, 2021 public meeting, the Council considered the August 17, 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 did not fully comply with the Council’s July 27, 2021 Interim Order. Specifically, although the Custodian timely provided the Complainant with the responsive records, she did not provide a certified confirmation of compliance to the Executive Director within the prescribed time frame.

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

² Represented by Mohamed S. Jalloh, Esq., of Jalloh & Jalloh, LLC (Linden, NJ).

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

2. Ms. Nidian Ruiz provided an insufficient response pursuant to N.J.S.A. 47:1A-5(g). Additionally, the Custodian unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. However, although the Custodian failed to fully comply with the Council's July 27, 2021 Interim Order, she demonstrated that she provided the Complainant with the requested records. 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 July 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, 71 (2008). Specifically, the Custodian was ordered to produce the responsive records maintained by the Roselle Police Department. 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 August 25, 2021, the Council distributed its Interim Order to all parties. On September 29, 2021, the Government Records Council ("GRC") notified the parties that the deadline to notify it of a settlement for counsel fees expired on September 23, 2021 and provided a deadline for the Complainant to apply for counsel fees. That same day, the Complainant responded to the GRC, stating that a settlement had been reached with the Borough of Roselle ("Borough") on September 22, 2021. The Custodian and Custodian's Counsel also responded stating that a settlement had been reached.

On September 30, 2021, the GRC inquired the Custodian as to whether the settlement had been formally approved by the Borough, and if not, how much time was needed for same. On October 1, 2021, the Custodian responded to the GRC stating that two (2) additional weeks were needed for formal approval. The GRC granted the extension that same day, providing a deadline of October 22, 2021.

On October 22, 2021, the Custodian provided the GRC with a signed copy of Resolution 2021-346, which authorized the Borough Administrator to enter settlement with the Complainant regarding counsel fees in the instant matter for \$2,000.00.

Analysis

Prevailing Party Attorney's Fees

At its August 24, 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 August 25, 2021, the Council distributed its Interim Order to all parties; thus, the Complainant's response was due by close of business on September 23, 2021. On September 29, 2021, the GRC notified the parties that the deadline to notify it of a settlement for counsel fees expired on September 23, 2021 and provided a deadline for the Complainant to apply for counsel fees. The parties responded to the GRC that day, stating that a settlement had been reached on September 22, 2021. The Custodian also stated that additional time was needed for the Borough to formally approve the settlement. The GRC granted an extension until October 22, 2021 to notify same of formal approval.

On October 22, 2021, the last day of the extended period, the Custodian provided the GRC with a signed copy of Resolution 2021-346 from the Borough. Therein, the resolution authorized the Borough Administrator to enter settlement with the Complainant for counsel fees in the amount of \$2,000.00.

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 that the Council should 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

October 26, 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

August 24, 2021 Government Records Council Meeting

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

Complaint No. 2020-46

v.

Borough of Roselle (Union)
Custodian of Record

At the August 24, 2021 public meeting, the Government Records Council (“Council”) considered the August 17, 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 did not fully comply with the Council’s July 27, 2021 Interim Order. Specifically, although the Custodian timely provided the Complainant with the responsive records, she did not provide a certified confirmation of compliance to the Executive Director within the prescribed time frame.
2. Ms. Nidian Ruiz provided an insufficient response pursuant to N.J.S.A. 47:1A-5(g). Additionally, the Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. However, although the Custodian failed to fully comply with the Council’s July 27, 2021 Interim Order, she demonstrated that she provided the Complainant with the requested records. 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 July 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, 71 (2008). Specifically, the Custodian was ordered to produce the responsive records maintained by the Roselle Police Department. 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 24th Day of August 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: August 25, 2021

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
August 24, 2021 Council Meeting**

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

GRC Complaint No. 2020-46

v.

**Borough of Roselle (Union)²
Custodial Agency**

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

1. Driving Under the Influence/Driving While Intoxicated (“DUI/DWI”) summonses and complaints that were prepared by the Police Department from January 2019 to present.
2. Drug possession complaints and summonses prepared and filed by the Police Department from January 2019 through present.
3. Drug paraphernalia complaints and summonses prepared and filed by the Police Department from January 2019 through present.

Custodian of Record: Lydia Massey
Request Received by Custodian: December 26, 2019
Response Made by Custodian: January 29, 2020
GRC Complaint Received: February 24, 2020

Background

July 27, 2021 Council Meeting:

At its July 27, 2021 public meeting, the Council considered the July 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. Nidian Ruiz’s response was insufficient because she failed to definitively state that the records responsive to the Complainant’s OPRA request did not exist. N.J.S.A. 47:1A-5(g); Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009).

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

² Represented by Mohamed S. Jalloh, Esq., of Jalloh & Jalloh, LLC (Linden, NJ).

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

2. The Custodian may have unlawfully denied access to the requested complaints and summonses responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to conduct a search for responsive records through NPD's access to eCDR. Simmons v. Mercado, ___ N.J. ___ (2021). Thus, the Custodian shall perform a search for the responsive complaints and summonses through eCDR or maintained physically by the Borough of Roselle. Should the Custodian not locate such records, she must certify to this fact. Also, should the Custodian determine that a special service charge is warranted thereafter, she must provide the Complainant with the amount of the special service charge required to purchase the requested summonses and complaints.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order by disclosing the responsive records with any appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously providing certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁴ to the Executive Director.⁵**
4. **In the event the Custodian determines that a special service charge is applicable, the Custodian shall complete the GRC's 14-point analysis⁶ and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council's Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Executive Director certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with R. 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**

⁴ "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."

⁵ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium.

⁶ See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>.

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

Procedural History:

On July 28, 2021, the Council distributed its Interim Order to all parties. On August 5, 2021, the Custodian provided a certification in response to the Interim Order. The Custodian certified that the Roselle Police Department ("RPD") provided the Complainant with access to the requested records electronically on July 29, 2021. The Custodian also stated that some of the records were redacted pursuant to N.J.S.A. 47:1A-1.1. Later that same day, the Complainant e-mailed the GRC stating that he received the responsive records and was not charged.

Analysis

Compliance

At its July 27, 2021 meeting, the Council ordered the Custodian to locate and provide access to the requested records or provide an estimated special service charge. 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 July 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 August 4, 2021.

On July 29, 2021, the first (1st) day after receipt of the Council's Order, RPD provided electronic copies of the responsive records to the Complainant. However, the Custodian did not provide a certified confirmation of compliance to the Executive Director until August 5, 2021, one (1) day after the deadline expired. Thus, the Custodian did not fully comply with the Order due to a timeliness issue.

Therefore, the Custodian did not fully comply with the Council's July 27, 2021 Interim Order. Specifically, although the Custodian timely provided the Complainant with the responsive records, she did not provide a certified confirmation of compliance to the Executive Director within the prescribed time frame.

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, Ms. Nidian Ruiz provided an insufficient response pursuant to N.J.S.A. 47:1A-5(g). Additionally, the Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. However, although the Custodian failed to fully comply with the Council’s July 27, 2021 Interim Order, she demonstrated that she provided the Complainant with the requested records. 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, 432 (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.]

In the instant matter, the Complainant sought complaints and summonses prepared by RPD pertaining to drug possession, drug paraphernalia, and DUI/DWI offenses. The Custodian asserted that the records were maintained by the municipal court and retrieved through a process separate from OPRA. The Complainant then filed the instant complaint asserting that RPD had access to the requested records.

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 July 27, 2021 Interim Order, the Custodian was ordered to produce the responsive records that were maintained by RPD, 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 July 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. 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. 51. Specifically, the Custodian was ordered to produce the responsive records maintained by RPD. 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 Custodian did not fully comply with the Council's July 27, 2021 Interim Order. Specifically, although the Custodian timely provided the Complainant with the responsive records, she did not provide a certified confirmation of compliance to the Executive Director within the prescribed time frame.

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).

2. Ms. Nidian Ruiz provided an insufficient response pursuant to N.J.S.A. 47:1A-5(g). Additionally, the Custodian unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. However, although the Custodian failed to fully comply with the Council's July 27, 2021 Interim Order, she demonstrated that she provided the Complainant with the requested records. 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 July 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, 71 (2008). Specifically, the Custodian was ordered to produce the responsive records maintained by the Roselle Police Department. 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

August 17, 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

July 27, 2021 Government Records Council Meeting

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

Complaint No. 2020-46

v.
Borough of Roselle (Union)
Custodian of Record

At the July 27, 2021 public meeting, the Government Records Council (“Council”) considered the July 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. Nidian Ruiz’s response was insufficient because she failed to definitively state that the records responsive to the Complainant’s OPRA request did not exist. N.J.S.A. 47:1A-5(g); Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009).
2. The Custodian may have unlawfully denied access to the requested complaints and summonses responsive to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to conduct a search for responsive records through NPD’s access to eCDR. Simmons v. Mercado, ___ N.J. ___ (2021). Thus, the Custodian shall perform a search for the responsive complaints and summonses through eCDR or maintained physically by the Borough of Roselle. Should the Custodian not locate such records, she must certify to this fact. Also, should the Custodian determine that a special service charge is warranted thereafter, she must provide the Complainant with the amount of the special service charge required to purchase the requested summonses and complaints.
3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council’s Interim Order by disclosing the responsive records with any appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously providing certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,¹ to the Executive Director.²**

¹ "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."

² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium.

4. **In the event the Custodian determines that a special service charge is applicable, the Custodian shall complete the GRC's 14-point analysis³ and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council's Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Executive Director certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with R. 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**
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 Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

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

³ See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf> .

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
July 27, 2021 Council Meeting**

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

GRC Complaint No. 2020-46

v.

**Borough of Roselle (Union)²
Custodial Agency**

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

1. Driving Under the Influence/Driving While Intoxicated (“DUI/DWI”) summonses and complaints that were prepared by the Police Department from January 2019 to present.
2. Drug possession complaints and summonses prepared and filed by the Police Department from January 2019 through present.
3. Drug paraphernalia complaints and summonses prepared and filed by the Police Department from January 2019 through present.

Custodian of Record: Lydia Massey
Request Received by Custodian: December 26, 2019
Response Made by Custodian: January 29, 2020
GRC Complaint Received: February 24, 2020

Background⁴

Request and Response:

On December 24, 2019, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On January 7, 2020 and January 16, 2020, Nidian Ruiz responded on the Custodian’s behalf seeking an extension of time to respond to the Complainant’s request. On January 29, 2020, Ms. Ruiz responded in writing stating that the Borough of Roselle (“Borough”) was waiting for the Roselle Municipal Court (“Municipal Court”) to send their response. Ms. Ruiz also sought an additional extension of time until February 7, 2020 to provide a full response. Later that same day, Ms. Ruiz responded to the Complainant stating that the Municipal Court required completion of its request form to receive

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

² Represented by Mohamed S. Jalloh, Esq., of Jalloh & Jalloh, LLC (Linden, 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.

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the requested records and attached a copy of the form to the e-mail.

Denial of Access Complaint:

On February 24, 2020, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that New Jersey police departments have direct access to eCDR as well as the ATS/ACS database. The Complainant argued that police departments did not need the assistance or permission of any court to access the databases containing the responsive records.

The Complainant also asserted that the Records Retention Schedule for both Municipal Police Departments and Municipal Prosecutors required retention of the requested records. The Complainant also contended that several other police departments have retrieved, printed, and furnished the Complainant with the requested records. The Complainant therefore requested the GRC compel compliance with the OPRA request and to award counsel fees.

Statement of Information:

On April 8, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on January 26, 2020. The Custodian certified that on January 29, 2020, Ms. Ruiz responded on her behalf informing the Complainant that he would need to complete the Municipal Court’s records request form to obtain the records.

The Custodian, through Counsel, asserted that the Borough did not maintain a database that was organized or categorized in the manner as described by the Complainant. Counsel asserted that eCDR did not allow for the Custodian to generate copies of the requested summonses and complaints by searching via offense or by period. Counsel asserted that the requested records could only be located via name or the summons number. Thus, Counsel argued that the request failed to adequately identify government records. See MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

Counsel also asserted that according to the Municipal Police Departments Record Retention Schedule, copies of the requested summonses were maintained by the Municipal Court and not the Borough. Counsel therefore argued that there was no denial of access if the Borough did not maintain the requested records. See Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005).

Counsel further argued that the Custodian acted in accordance with her duties and had no knowledge or reason to know that any actions she made were wrongful. Counsel argued that the Custodian produced all responsive records within the Borough’s control and her actions did not rise to a knowing and willful violation of OPRA. Counsel also argued that the Complainant has filed numerous similar requests throughout the state over the past year and contended that the Complainant’s motivations lie in the expectation of obtaining counsel fees.

Additional Submissions:

On April 11, 2020, the Complainant filed a letter brief in opposition to the Custodian's SOI. Therein, the Complainant first argued that because police officers "made" the complaints upon issuing them, they qualified as government records under OPRA. Further, the Complainant contended that according to an Attorney General Directive, if the complaints were unable to be entered electronically, police officers were required to prepare the complaints manually and then transmitted to the municipal court for filing.

The Complainant next argued that police departments in the State were required to retain summonses and complaints until thirty (30) days after disposition of same.⁵ The Complainant further asserted that municipalities were required to retain these records for at least fifteen (15) years after disposition. The Complainant argued that because police officers and municipal prosecutors were Borough employees, their records were subject to access under OPRA and should have been disclosed accordingly. The Complainant noted that if the responsive records were in storage or otherwise unavailable, the Custodian had an obligation to extend the response time frame but failed to do so.

The Complainant also argued that in accordance with Paff v. Galloway Twp., 229 N.J. 340 (2017), agencies were required to provide access to electronically stored information. The Complainant asserted that eCDR was set up by the New Jersey State Police ("NJSP") in cooperation with the Administrative Office of the Courts ("AOC"), and that eCDR was a separate system from eCourts. Notwithstanding, the Complainant contended that since police officers had direct access to the database maintaining the records and could retrieve and print the records without any assistance, help, or permission from the municipal court, they were obligated to retrieve same.

The Complainant further argued that he specifically requested records that were prepared by the police department, and not the judiciary. Additionally, the Complainant asserted that R. 1:38 was inapplicable since the request was made directly to an executive branch agency. The Complainant asserted that they had the right to decide where to send their request to the judiciary or executive branch.

The Complainant further noted that the Borough's obligation to disclose responsive records was not diminished simply because judiciary also made them available to the public. See Keddie v. Rutgers Univ., 144 N.J. 377 (1996). The Complainant also noted that it was far cheaper to obtain the responsive records via OPRA than through R. 1:38. The Complainant argued that OPRA should not be used as "a money generating scheme (another form of taxation) for government." The Complainant thus argued that the Borough should be required to disclose the responsive records.

The Complainant also argued that the Borough should not be allowed to erect technological barriers as means to deny access to government records. The Complainant contended that the

⁵ The Complainant noted that his experience was that DUI/DWI or drug possession charges normally included sample testing by the New Jersey State Police. The Complainant alleged that this testing averaged between three (3) and six (6) months.

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complaints should remain subject to access under OPRA regardless of whether they were prepared manually in the past but now entered electronically. The Complainant asserted that the standard under OPRA was not “actual possession” but rather “access” to the requested records, citing Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), and Verry v. Franklin Fire Dist. No. 1, 230 N.J. 285 (2017).

The Complainant also noted that several other judges have ruled that summons and complaints prepared by police officers were subject to disclosure and ordered counsel fees as a result. The Complainant asked the GRC to take notice of the decisions in favor of AADARI in AADARI v. Town of West New York, Docket No. HUD-L-31-20, and AADARI v. City of Millville, Docket No. CUM-L-712-18.⁶

On May 19, 2021, the GRC requested additional information from the Custodian. Specifically, the GRC asked:

1. Do the [Borough’s] police officers keep or maintain copies of the requested summonses and complaints upon submission to the [Municipal] Court?
2. Does the [Borough’s] Municipal Prosecutor keep or maintain physical copies of the requested summonses and complaints during the pendency of the related matters?
3. Does the [Borough] keep or maintain copies of the requested summonses and complaints in archives or storage?

On June 8, 2021, the Custodian submitted a certification in response to the GRC’s request for additional information. The Custodian certified that Borough police officers retain copies of certain documents on a case by case basis. The Custodian certified that once a complaint and summons is created, they are submitted to the Municipal Court. The Custodian certified that because a court may amend, update, or alter those records, a copy retained by the police department would not be the official or most accurate version of the records. The Custodian also certified that most summons and complaints were retained electronically, if at all. The Custodian certified that physical copies were sometimes retained as a reference but were not maintained as an official record.

The Custodian also certified that the Municipal Prosecutor only prints summons and complaints in rare instances upon request from the Municipal Court. The Custodian certified that once used the printed documents were either returned to the Municipal Court or disposed of after a specific court session. The Custodian certified that if the Municipal Prosecutor’s office had a hard copy, it would not be the official version, since those were maintained by the Municipal Court. Lastly, the Custodian certified that her office did not control, maintain, or come in to contact with the aforementioned documents.

⁶ The New Jersey Supreme Court recently ruled in favor of AADARI in Simmons v. Mercado, ___ N.J. ___ (2021). Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. Borough of Roselle (Union), 2020-46 – Findings and Recommendations of the Executive Director

Analysis

Sufficiency of Response

OPRA provides that if a “. . . custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor . . . on the request form and promptly return it to the requestor.” N.J.S.A. 47:1A-5(g) (emphasis added). The Council has held that for a denial of access to be in compliance with OPRA, the custodian must definitively state that records did not exist at the time of the initial response. See Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009). See also Paff v. City of Union City (Hudson), GRC Complaint No. 2012-262 (August 2013).

Here, Ms. Ruiz responded on the Custodian’s behalf stating that the Complainant needed to complete the Municipal Court’s records request form to obtain the requested complaints and summonses. After the filing of the Denial of Access Complaint, the Custodian certified in the SOI that the Borough’s electronic database did not organize or maintain the requested records in the manner outlined by the Complainant. However, the Custodian also asserted that no responsive records exist. Thus, the Custodian’s SOI response definitively indicated the fact that no records existed, whereas the initial response only directed the Complainant to complete the Municipal Court’s request form without stating that no records exist within the Borough.

Therefore, Ms. Ruiz’s response was insufficient because she failed to definitively state that the records responsive to the Complainant’s OPRA request did not exist. N.J.S.A. 47:1A-5(g); Shanker, GRC 2007-245.

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

OPRA also provides that the GRC “shall not have jurisdiction over the Judicial or Legislative Branches of State Government or any agency, officer, or employee of those branches. N.J.S.A. 47:1A-7(g). In Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2013-299 (September 2014), the custodian argued in part that because the requested presentence report was a court record created by the Judiciary, it was not a government record under N.J.S.A. 47:1A-1.1, and not within the GRC’s jurisdiction under N.J.S.A. 47:1A-7(g). However, the Council disagreed holding that because the agency received and kept on file a copy of the record, it still met the definition of a government record. N.J.S.A. 47:1A-1.1.

Additionally, in Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004), the custodian argued that the requested complaints and summonses were not subject to access since they were dated beyond the required retention period via the State’s retention schedule. The Council held that if the agency in fact possessed the responsive records, they were

subject to access under OPRA even if they were supposed to have been destroyed in accordance with the retention schedule. See also Mawhinney v. Egg Harbor City Police Dep't (Atlantic), GRC Complaint No. 2015-85 (January 2016).

Additionally, although decided during the pendency of this complaint, the GRC finds the Court's holding in Simmons relevant and binding. There, the Complainant requested the same records as those at issue in the instant matter, with the custodian asserting that the records were not maintained by the Millville Police Department ("MPD") once its officers created and submitted the records through eCDR. Simmons, ___ N.J. ___ (slip op. at 13-14). The Court reversed the Appellate Division and found that the requested records were government records subject to disclosure under OPRA. Id., slip op. at 10. The Court found that notwithstanding which government branch created the CDR-1 and -2 forms, it is the information contained within those forms by MPD officers that is sought by AADARI. Id., slip op. at 26-25. Thus, the Court held that:

Because MPD officers create the completed CDR-1s by populating the forms with the information necessary to generate a summons and submit it to the court, there is no question that the CDR-1s are government records subject to disclosure pursuant to OPRA.

Additionally, the Court rejected MPD's argument that they did not maintain the records, holding that OPRA's definition of a government record is not restricted to records maintained by the agency, but rather includes records it creates, even if not maintained. Id., slip op. at 26-27. Thus, the Court found, "that the Judiciary might maintain on its servers the information that MPD made does not absolve MPD of its obligation to produce that information pursuant to a proper OPRA request made to MPD." Id., slip op. at 29.

In the current matter, the Complainant asserted that the retention schedules required police departments and municipal prosecutors to possess copies of the requested records for the stated period. Furthermore, the Complainant asserted that the Borough had access to the complaints and/or summonses through eCDR.

Ms. Ruiz responded on the Custodian's behalf stating that the Municipal Court required completion of its records request form in order to obtain the requested summonses and complaints. In the SOI, the Custodian asserted that the requested records were maintained by the Municipal Court as noted in the police department's retention schedules. Furthermore, the Custodian argued that the electronic database did not allow for the Custodian to search for responsive records by offense and period. The Custodian asserted that the Borough required the summons' case number or subject name to locate a record.

Initially, the GRC addresses the parties' arguments pertaining to the retention schedules. Upon review, the Complainant's contention that the Borough and its Municipal Prosecutor are required by law to maintain the requested records based upon the retention schedules ignores the prevailing caselaw. Instead, the retention schedules determine how records that may be in an agency's possession are to be maintained, and are not a legal requirement to make, maintain, or keep on file every identified record. See N. Jersey Media Grp. Inc., 229 N.J. at 568. Likewise, the Custodian's reliance on the retention schedule's notation that record copies of complaints and

summonses are maintained by the Municipal Court does not absolve the Borough's obligation to produce records it may have in its possession. See Merino, GRC 2003-110.

However, considering the Court's decision in Simmons, the Custodian maintains the obligation to provide the Complainant with the responsive records available through eCDR. Notwithstanding whether the Borough maintained physical copies of same, the Court held that since police departments created the CDR-1s and CDR-2s when inputting information, they were government records even if the records are maintained by the Judiciary's electronic databases. Simmons, ___ N.J. ___ (slip op. at 29).

Accordingly, the Custodian may have unlawfully denied access to the requested complaints and summonses responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to conduct a search for responsive records through NPD's access to eCDR. Simmons, ___ N.J. ___ (slip op. at 29). Thus, the Custodian shall perform a search for the responsive complaints and summonses through eCDR or maintained physically by the Borough. Should the Custodian not locate such records, she must certify to this fact. Also, should the Custodian determine that a special service charge is warranted thereafter, she must provide the Complainant with the amount of the special service charge required to purchase the requested summonses and complaints.

Knowing & Willful

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

Prevailing Party Attorney's Fees

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

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Nidian Ruiz's response was insufficient because she failed to definitively state that the records responsive to the Complainant's OPRA request did not exist. N.J.S.A. 47:1A-5(g); Shanker v. Borough of Cliffside Heights (Bergen), GRC Complaint No. 2007-245 (March 2009).
2. The Custodian may have unlawfully denied access to the requested complaints and summonses responsive to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to conduct a search for responsive records through NPD's access to eCDR. Simmons v. Mercado, ___ N.J. ___ (2021). Thus, the Custodian shall perform a search for the responsive complaints and summonses through eCDR or maintained physically by the Borough of Roselle. Should the Custodian not

locate such records, she must certify to this fact. Also, should the Custodian determine that a special service charge is warranted thereafter, she must provide the Complainant with the amount of the special service charge required to purchase the requested summonses and complaints.

3. **The Custodian shall comply with conclusion No. 2 above within five (5) business days from receipt of the Council's Interim Order by disclosing the responsive records with any appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously providing certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸**
4. **In the event the Custodian determines that a special service charge is applicable, the Custodian shall complete the GRC's 14-point analysis⁹ and calculate the appropriate special service charge. The Custodian shall then make the amount of the charge, together with the completed 14-point analysis, available to the Complainant within five (5) business days from receipt of the Council's Interim Order. The Complainant shall, within five (5) business days from receipt of the special service charge, deliver to the Custodian (a) payment of the special service charge or (b) a statement declining to purchase the records. The Complainant's failure to take any action within said time frame shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records pursuant to N.J.S.A. 47:1A-5 and Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006). Within twenty (20) business days following the Complainant's payment of the special service charge, the Custodian shall deliver to the Executive Director certified confirmation of compliance as first provided above. Conversely, if the Complainant declined to purchase the records, the Custodian shall deliver to the Executive Director a statement confirming the Complainant's refusal to purchase the requested records and such statement shall be in the form of a certification in accordance with R. 1:4-4. The completed 14-point analysis shall be attached to the certification and incorporated therein by reference.**
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 Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

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⁸ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium.

⁹ See <https://nj.gov/grc/pdf/OPRASpecialServiceCharge.pdf>.

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. Borough of Roselle (Union), 2020-46 – Findings and Recommendations of the Executive Director

Prepared By: Samuel A. Rosado
Staff Attorney

July 20, 2021