



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 31, 2023 Government Records Council Meeting

Rotimi Owoh, Esq. (o/b/o Delores Simmons,
Baffi Simmons, and Grace Woko)
Complainant

Complaint No. 2021-115

v.

Magnolia Police Department (Camden)
Custodian of Record

At the January 31, 2023 public meeting, the Government Records Council (“Council”) considered the January 24, 2023 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian failed to provide the Complainant with the opportunity to review and reject the special service charge prior to being incurred. N.J.S.A. 47:1A-5(c). Additionally, although the Custodian proved that a special service charge is warranted here, the total cost is unreasonable. Specifically, the evidence does not support that the two (2) officers were the only employees capable of performing the work. See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); The Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002); Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (December 2007); Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015). Thus, the Custodian must calculate a new special service charge based on a detailed accounting of the hourly rate of the lowest paid employee capable of performing the work to respond to the OPRA request. See Palkowitz.
2. **The Custodian shall comply with conclusion No. 1 above by providing the amount of the recalculated charge 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). Should the Complainant remit payment, the Custodian shall provide access to the responsive records within ten (10) business days following receipt of said payment.**

3. **Should the Custodian fail to adhere to the above, the Council's Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

4. 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 recalculate the special service charge to reflect the hourly rate of the lowest paid employee capable of performing the work. 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. 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.**

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 31st Day of January 2023

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: February 6, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
January 31, 2023 Council Meeting**

**Rotimi Owoh, Esq. (on Behalf of Delores Simmons,
Baffi Simmons, and Grace Woko)¹
Complainant**

GRC Complaint No. 2021-115

v.

**Magnolia Police Department (Camden)²
Custodial Agency**

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

1. “[A]rrest listings” or “arrest summaries” or “booking records” showing the name, sex, and race of the individuals who were charged with drug paraphernalia by your police department from January 2020 to present.
2. “[A]rrest listings” or “arrest summaries” or “booking records” showing the name, sex, and race of the individuals who were charged with jaywalking by your police department from January 2020 to present.
3. [C]omplaints and summonses prepared by your police department relating to individuals who were charged with drug possession and or drug paraphernalia by your police department from January 2020 to present.
4. DWI/DUI summonses and complaints prepared and or issued by your police department from January 2020 to present.
5. [C]omplaints and summonses prepared by your police department relating to individuals who were charged with jaywalking by your police department from January 2020 to present.
6. [C]omplaints that were filed against your police department and or police officers for misconduct, harassment, excessive use of force and or discrimination from 2014 to present.
7. [S]ettlement agreements entered by your police department and or municipality to resolve complaints and allegations of any misconduct(s), harassment, hostile working environment, use of force, discrimination from 2014 to present.
8. [S]ettlement agreements entered between your police department or municipality with any one of your current and former police officers from 2014 to present.
9. [S]ettlement agreements your municipality entered with any one of your police officers who challenged his or her termination in court or through arbitration from 2014 to present.
10. [A]ny agreement your municipality entered into with any of your present or former officers promising the officer(s) that your police department will give positive employment reference of “good standing” to future employers despite taking adverse employment action against the officer(s) such as termination or asking the officer(s) to resign or retire.

¹ The Complainant represents Delores Simmons, Baafi Simmons, and Grace Woko.

² Represented by Daniel H. Long, Esq., of Wade, Long, Wood & Long, LLC (Laurel Springs, NJ).

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11. PDNA issue by your police department from 2014 to present.
12. [C]ancelled checks and invoices your police department and or municipality used to settle sexual harassment allegations within your police department from 2014 to present.
13. Names, date of hire, date of separation and reason for separation, salary, payroll record, amount and type of pension of individuals who either resigned or retired or terminated or otherwise separated from 2002 to 2017. N.J.S.A. 47:1A-10. This request also includes any agreement entered with each one of the separated police officer(s).
14. Records relating to allegation of ticket fixing and or station house discharge in the last 7 years.
15. Use of Force reports from 2018 to 2021.
16. Names, rank, date of hire, date of demotion and reason for demotion and salary of individuals who were demoted in the last 7 years by your police force.
17. Name, rank, date of hire, and reason for separation of the police officers who used deadly force in the last 7 years.
18. Records, reports and notifications showing and tracking the number of police officers who triggered the [Early Warning (“EW”)] performance indicators, the conducts that triggered the EW system, and the remedial actions and disciplinary actions that were taken by your police department against the police officers from 2016 through the present.

Custodian of Record: Daneen Fuss³

Request Received by Custodian: March 1, 2021

Response Made by Custodian: May 19, 2021

GRC Complaint Received: June 2, 2021

Background⁴

Request and Response:

On March 1, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 19, 2021, Lt. Joseph Pappalardo of the Magnolia Police Department (“MPD”) responded on behalf of the Custodian in writing stating that the Complainant’s OPRA request was ready to be mailed pending receipt of payment. Lt. Pappalardo included a copy of an invoice with a total charge of \$988.20.

Denial of Access Complaint:

On June 2, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to allow the Complainant to approve the charge prior to its imposition. The Custodian also asserted that the Custodian failed to itemize the charge via the request items. The Complainant also contended that the charge of \$988.20 was excessive. The Complainant requested that the GRC provide those

³ The current Custodian of Record is Krystel Arana.

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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records that were not part of the charge; to find the charge excessive and order same be reduced; and to award counsel fees.

Statement of Information:

On June 22, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on March 1, 2021. The Custodian certified that Lt. Pappalardo responded on her behalf in writing on May 19, 2021, stating that a special service charge was required to fulfil the request.

The Custodian asserted that the Complainant’s request required the review of forty-five (45) Use of Force Reports (“UFR”) and 458 arrest reports. The Custodian asserted that of those arrest reports, twenty-eight (28) were drug-related arrests and thirty-four (34) encompassed DWI offenses. The Custodian asserted that while some research was accessible by computer, other request items required extensive research by the MPD.

As part of the SOI, the Custodian included answers to the GRC’s 14-point questionnaire:

1. What records are requested?

Response: See attached OPRA request.

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

Response: The nature of the records requested were widespread, varying in nature, and required a significant amount of time to research, collate, organize by date, and perform necessary redactions. While some of the requests were overly broad, we did our best to fulfill this request. The request specifically referenced over 15 items which varied from the following:

- Copies of “arrest listing” and “arrest summaries” of individuals charged with drug offenses January 2020 – present.
- Copies of complaints related to drug offenses January 2020 – present.
- Copies of DWI complaints January 2020 – present.
- Jaywalking complaints January 2016 – present.
- Internal Affairs reports 2014 – present.
- Monetary agreements from individuals who have sued the police department 2014 – present.
- Past officers who have left the police department 2002 – present.
- Settlement agreements between police officers and the Borough of Magnolia who have left the police department 2014 – present.
- Use of Force Reports 2018 – present. Records related to “ticket fixing”.
- List of officer promotions and demotions last 7 years.
- Deadly force reports – last 7 years.
- List of officers who have triggered the “EW” system – 2016 – present.

To date, this request has encompassed 45 Use of Force reports. 458 arrest reports had to be reviewed in this time period, of which 34 encompassed DWI offenses, along with 28 drug-related arrests. All of which had to be individually reviewed. While some research was accessible by computer, other items requested required extensive research in our records department.

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

Response: The request encompasses a time period of 2014 to 2021, with some requests going back to year 2002.

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

Response: Yes.

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

Response: The MPD employs 11 full-time police officers and 3 part-time police officers.

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

Response: 2.

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

Response: 31 records requested required redaction.

8. What is the level of personnel, hourly rate and number of hours, if any, required for a government employee to locate, retrieve, and assemble the records for copying?

Response: See attached invoice.

9. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to monitor the inspection or examination of the records requested?

Response: See attached invoice.

10. What is the level of personnel, hourly rate, and number of hours, if any, required for a government employee to return records to their original storage place?

Response: See attached invoice.

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

Response: N/A.

12. Who (name and job title) in the agency will perform the work associated with the records request and that person’s hourly rate?

Response: Lt. Joseph Pappalardo & Lt. Joseph Vadurro (\$49.41 hourly).

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

Response: OPRA requests can be sent electronically via e-mail or by fax. A copy machine is available in the police department.

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

Response: See attached invoice.

The attached invoice indicates that Lt. Pappalardo expended a total of fifteen (15) hours over a period of five (5) days processing the request. The invoice also indicates that Lt. Vadurro expended five (5) hours over two (2) days processing the request. The invoice provided that twenty (20) hours were expended for a total cost of \$988.20 at a rate of \$49.41 per hour for both officers. The Custodian also provided a certification from Chief Scott Paris attesting to the truth and accuracy of the SOI.

Analysis

Special Service Charge

Whenever a records custodian asserts that fulfilling an OPRA records request requires an “extraordinary” expenditure of time and effort, a special service charge may be warranted pursuant to N.J.S.A. 47:1A-5(c). In this regard, OPRA provides that:

Whenever the nature, format, manner of collation, or volume of a government record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an *extraordinary expenditure of time and effort to accommodate the request*, the public agency may charge, in addition to the actual cost of duplicating the record, a *special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies . . .*

[Id. (emphasis added).]

The determination of what constitutes an “extraordinary expenditure of time and effort” under OPRA must be made on a case by case basis and requires an analysis of a variety of factors. These factors were discussed in Courier Post v. Lenape Reg’l High Sch. Dist., 360 N.J. Super.

191, 199 (Law Div. 2002). There, the plaintiff publisher filed an OPRA request with the defendant school district, seeking to inspect invoices and itemized attorney bills submitted by four law firms over a period of six and a half years. Id. at 193. Lenape assessed a special service charge due to the “extraordinary burden” placed upon the school district in responding to the request. Id.

Based upon the volume of documents requested and the amount of time estimated to locate and assemble them, the court found the assessment of a special service charge for the custodian’s time was reasonable and consistent with N.J.S.A. 47:1A-5(c). Id. at 202. The court noted that it was necessary to examine the following factors in order to determine whether a records request involves an “extraordinary expenditure of time and effort to accommodate” pursuant to OPRA: (1) the volume of government records involved; (2) the period of time over which the records were received by the governmental unit; (3) whether some or all of the records sought are archived; (4) the amount of time required for a government employee to locate, retrieve and assemble the documents for inspection or copying; (5) the amount of time, if any, required to be expended by government employees to monitor the inspection or examination; and (6) the amount of time required to return the documents to their original storage place. Id. at 199.

The court determined that in the context of OPRA, the term “extraordinary” will vary among agencies depending on the size of the agency, the number of employees available to accommodate document requests, the availability of information technology, copying capabilities, the nature, size and number of documents sought, as well as other relevant variables. Id. at 202. “[W]hat may appear to be extraordinary to one school district might be routine to another.” Id.

In Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015), the Council was tasked with determining whether a proposed special service charge was warranted and reasonable. The custodian provided to the GRC a response to its 14-point analysis request that included specific details such as the hours spent by employee, the task performed during those hours, and the hourly rate. The Council reviewed the response and found that the charge was warranted. However, the Council also found that the charge was not reasonable. Specifically, the Council found that the Borough Administrator was not the lowest paid employee qualified to perform some of the work the custodian credited him with in the 14-point analysis response. Thus, the Council adjusted the fee less the amount identified as unreasonable. Id. at 8.

In the instant matter, the GRC first addresses the Complainant’s claim that he was not given prior notice of the charge, nor the opportunity to review and reject same in violation of N.J.S.A. 47:1A-5(c).

Upon review, the GRC finds that the Custodian failed to adhere to OPRA’s requirement that a requestor must be given an opportunity to review and reject a special service charge prior to its imposition. The Custodian’s sole response to the Complainant’s OPRA request was on May 19, 2021, providing an invoice for work performed in processing the request. No estimate was provided to the Complainant prior to submitting the invoice. The plain language of the statute grants the Complainant the ability to determine the charge’s reasonableness and decide whether or not to accept. See N.J.S.A. 47:1A-5(c).

The GRC shall now address whether the special service charge was warranted and reasonable. In the instant matter, the Custodian provided a 14-point analysis reflecting the analytical framework outlined in Courier Post, 360 N.J. Super. at 199, regarding the proper assessment of a special service charge. The Custodian argued that the proposed charge of \$988.20 comprised twenty (20) hours to process the request, which required reviewing forty-five (45) UFRs. The Custodian also contended the work also required reviewing 458 arrest reports, resulting in locating thirty-four (34) DUI offenses and twenty-eight (28) drug-related offenses. The Custodian certified that Lt. Pappalardo and Lt. Vadurro were assigned to perform the work at \$49.41 per hour. The Custodian also certified that the Borough employed eleven (11) full-time police officers and three (3) part-time police officers.

A review of the forgoing supports that the Borough's expenditure of twenty (20) hours represents an extraordinary amount of time and effort to produce responsive records given the number of records reviewed and size of the agency. See Rivera v. Rutgers, The State Univ. of New Jersey, GRC Complaint No. 2009-311 (Interim Order dated January 31, 2012). The GRC is further persuaded based on the Custodian's certification that extensive research was needed to locate responsive records, and that redactions were needed for a portion of those found.

However, the Council must now address whether the proposed fee is reasonable. In Courier Post, 360 N.J. Super. at 204, the court held that it would be appropriate to calculate the hourly wage rates of the clerical and professional staff involved in satisfying a request and multiplying those figures by the total hours spent, if the custodian can prove that the professional level of human resource was needed to fulfill the request. Thus, as part of the calculation of a special service charge, a custodian must prove that same was based upon the lowest paid, qualified employee's hourly rate to perform the work required to respond to the subject OPRA request. Palkowitz, GRC 2014-302. See also Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (December 2007).

Here, while the GRC agrees that a special service charge is warranted, the charge based on that time must reflect the lowest paid hourly rate to perform the work. See Palkowitz, GRC 2014-302 at 8. Unlike in Palkowitz, the Custodian did not provide a detailed accounting of work performed by each officer beyond the number of hours as listed in the invoice. Moreover, the Custodian failed to demonstrate that the officers were the only employees capable of performing the search, rather than herself or another MPD employee. Instead, the Custodian directed the GRC to the invoice, which fails to describe the officers' duties, responsibilities, or access to potentially responsive records that the Custodian or other capable employee would not have. Such an action is inapposite to OPRA and prevailing case law. Thus, the applicable charge should be recalculated to reflect the Borough's lowest paid employee's hourly rate locate, review, and redact the responsive records.

Accordingly, the Custodian failed to provide the Complainant with the opportunity to review and reject the special service charge prior to being incurred. N.J.S.A. 47:1A-5(c). Additionally, although the Custodian proved that a special service charge is warranted here, the total cost is unreasonable. Specifically, the evidence does not support that the two (2) officers were the only employees capable of performing the work. See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. at 199, 204; Janney, GRC 2006-205; Palkowitz, GRC 2014-302.

Thus, the Custodian must calculate a new special service charge based on a detailed accounting of the hourly rate of the lowest paid employee capable of performing the work to respond to the OPRA request. See Palkowitz.

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. 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.]

The Complainant filed the instant complaint requesting that the GRC determine that the Custodian violated N.J.S.A. 47:1A-5(c) by imposing a special service charge before being given the opportunity to review and object to same. Additionally, the Complainant asserted that the charge itself was “excessive”. The Custodian provided responses to the GRC's 14-point analysis to assert that the charge was warranted and reasonable.

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 addition to failing to provide the Complainant with an opportunity to review and reject the special service charge, the charge itself unreasonable. Specifically, the Custodian failed to show that Lt. Pappalardo and Lt. Vadurro were the lowest paid employees capable of performing the work. Therefore, the Custodian must recalculate the charge based upon the Borough's lowest paid employee. Teeters, 387 N.J. Super. at 432. Thus, a causal nexus exists between this complaint and a change in the Custodian's conduct. Mason 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney's fees.⁵

⁵ The Council makes this determination with the understanding that the Complainant acted on behalf of a bona fide client at the time of the request. Although the Complainant's status as representing an actual client has been previously challenged, the available evidence on the record is insufficient to address that issue herein. See Owoh, Esq. (O.B.O. AADARI) v. Neptune City Police Dep't (Monmouth), GRC Complaint No. 2018-153 (April 2020) and Owoh, Esq. (O.B.O. AADARI) v. Freehold Twp. Police Dep't (Monmouth), GRC Complaint No. 2018-155 (Interim Order dated September 29, 2020).

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Therefore, the Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” Teeters, 387 N.J. Super. 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 recalculate the special service charge to reflect the hourly rate of the lowest paid employee capable of performing the work. 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 failed to provide the Complainant with the opportunity to review and reject the special service charge prior to being incurred. N.J.S.A. 47:1A-5(c). Additionally, although the Custodian proved that a special service charge is warranted here, the total cost is unreasonable. Specifically, the evidence does not support that the two (2) officers were the only employees capable of performing the work. See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-5(c); The Courier Post v. Lenape Reg’l High Sch., 360 N.J. Super. 191, 199 (Law Div. 2002); Janney v. Estell Manor City (Atlantic), GRC Complaint No. 2006-205 (December 2007); Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015). Thus, the Custodian must calculate a new special service charge based on a detailed accounting of the hourly rate of the lowest paid employee capable of performing the work to respond to the OPRA request. See Palkowitz.
2. **The Custodian shall comply with conclusion No. 1 above by providing the amount of the recalculated charge 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). Should the Complainant remit payment, the Custodian shall provide access to the responsive records within ten (10) business days following receipt of said payment.**
3. **Should the Custodian fail to adhere to the above, the Council’s Final Decision may be enforced in the Superior Court of New Jersey. N.J. Court Rules, R. 4:67-6; N.J.A.C. 5:105-2.9(c).**

4. 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 recalculate the special service charge to reflect the hourly rate of the lowest paid employee capable of performing the work. 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. 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

January 24, 2023