



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

January 31, 2023 Government Records Council Meeting

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

Complaint No. 2021-161

v.

Maywood Police Department (Bergen)
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’s July 12, 2021 response was insufficient because the Custodian failed to provide a specific legal basis for denying access to the requested records and failed to address each request item. N.J.S.A. 47:1A-5(g). See also DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). However, the GRC declines to order disclosure of non-pension information responsive to request item No. 9 since the evidence of record demonstrates that the Custodian provided the Complainant with same on October 20, 2021, and as part of the Statement of Information (“SOI”).
2. The Custodian unlawfully denied access to the record responsive to Complainant’s OPRA request item No. 5. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008). Specifically, the Custodian’s failure to locate responsive records until after she conducted an additional search following receipt of the Denial of Access Complaint resulted in an insufficient search. However, the GRC declines to order disclosure of the settlement agreement because the Custodian disclosed same to the Complainant on October 20, 2021, and as part of the SOI.
3. The Custodian unlawfully denied access to the requested complaints and summonses responsive to the Complainant’s OPRA request item Nos. 1 and 2. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve responsive records created by the Maywood Police Department. See Simmons v. Mercado, 247 N.J. 24, 42 (2021). However, the Council declines to order disclosure since the evidence of record demonstrates that the Custodian provided the Complainant with responsive records on October 20, 2021, and as part of the SOI.

4. Notwithstanding the Custodian's insufficient response, she bore her burden of proof that she lawfully denied access to the Complainant's OPRA request item Nos. 3, 4, 6, 7, 8 and 9 in part. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist for each request item. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

5. 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 did not provide the Complainant with the requested records until after the instant complaint was filed. 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(c).**

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,
Obafemi Simmons, and Grace Woko)¹
Complainant**

GRC Complaint No. 2021-161

v.

**Maywood Police Department (Bergen)²
Custodial Agency**

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

1. [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.
2. DWI/DUI summonses and complaints prepared and or issued by your police department from January 2020 to present.
3. [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.
4. [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.
5. [S]ettlement agreements entered between your police department or municipality with any one of your current and former police officers from 2014 to present.
6. [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.
7. [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.
8. [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.
9. 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).

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

² Represented by Brian Eyeran, Esq., of DAME Legal (Hackensack, NJ).

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

Custodian of Record: Barbara Dispoto
Request Received by Custodian: May 6, 2021
Response Made by Custodian: July 12, 2021
GRC Complaint Received: July 20, 2021

Background⁴

Request and Response:

On May 6, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 12, 2021, the Custodian responded to the Complainant in writing via, providing records responsive to request items not at issue in this matter.

Denial of Access Complaint:

On July 20, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Custodian failed to provide responsive records for all request items at issue. The Complainant also contended that for request item No. 1, the Custodian violated the New Jersey Supreme Court’s decision in Simmons v. Mercado, 247 N.J. 24 (2021), rev’g 464 N.J. Super. 77 (App. Div. 2020) by failing to provide the requested complaints and summonses. The Complainant requested the GRC compel the Maywood Police Department (“MPD”) to fully comply with the OPRA request and to award counsel fees.

Statement of Information:⁵

On April 4, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 6, 2021. The Custodian certified that she responded in writing on July 12, 2021.

The Custodian asserted that at the time of the OPRA request, complaints and summonses were considered under the possession and control of the Paramus Municipal Court (“Municipal Court”). The Custodian then asserted she provided responsive records to the Complainant on October 20, 2021, after receiving the instant complaint containing the Simmons decision, and a subsequent OPRA request seeking the same records. The Custodian stated that links to the records were also included within the Item No. 9 Index of the SOI.

The Custodian further stated that for item No. 5, no responsive records were located at the time of the request. The Custodian stated that after receiving the instant complaint, a misfiled settlement was located and provided to the Complainant on October 20, 2021. The Custodian next

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.

⁵ On July 30, 2021, this complaint was referred to mediation. On January 28, 2022, this complaint was referred back to the GRC for adjudication.

Rotimi Owoh, Esq. (on Behalf of Delores Simmons, Obafemi Simmons, and Grace Woko) v. Maywood Police Department (Bergen), 2021-161 – Findings and Recommendations of the Executive Director

stated that records responsive for request item No. 9 were provided on October 20, 2021, except for records pertaining to the pension amounts for officers. The Custodian asserted that those records were not maintained by the Borough of Maywood (“Borough”).

The Custodian affirmed that for the remaining request items, no responsive records were located after conducting a search of the Borough’s records.

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). A custodian’s failure to do so results in an insufficient response and a violation of OPRA. The Council has held that for a denial of access to be in compliance with OPRA, it must be specific and sufficient to prove that a custodian’s denial is authorized by OPRA. See DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009); Morris v. Trenton Police Dep’t (Mercer), GRC Complaint No. 2007-160 (May 2008). Further, in Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the Council held that “. . . [t]he Custodian’s response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).” See also Lenchitz v. Pittsgrove Twp. (Salem), GRC Complaint No. 2012-265 (Interim Order dated August 27, 2013).

Upon review, the GRC is satisfied that the Custodian provided an insufficient response. Here, the Custodian responded to the Complainant’s OPRA request by providing responsive records attached to an e-mail. However, the e-mail failed to identify whether the Custodian was denying access to any records and further failed to address each request item. Instead, the Custodian disclosed several records devoid of any indication as to which request item(s) the attached were responsive. It is not until the Custodian certified in the SOI that she stated whether responsive records existed for each request item. The facts here are on point with those in DeAppolonio and Paff; thus, it follows there was an insufficient response in the instant complaint.

Therefore, the Custodian’s July 12, 2021 response is insufficient because the Custodian failed to provide a specific legal basis for denying access to the requested records and failed to address each request item. N.J.S.A. 47:1A-5(g). See also DeAppolonio, GRC 2008-62 and Paff, GRC 2007-272. However, the GRC declines to order disclosure of non-pension information responsive to request item No. 9 since the evidence of record demonstrates that the Custodian provided the Complainant with same on October 20, 2021, and as part of the SOI.

Sufficiency of Search

It is the custodian’s responsibility to perform a complete search for the requested records before responding to an OPRA request, as doing so will help ensure that the custodian’s response is accurate and has an appropriate basis in law. In Schneble v. N.J. Dep’t of Env’tl. Protection, GRC Complaint No. 2007-220 (April 2008), the custodian initially stated that no records responsive

to the complainant's OPRA request existed. The custodian certified that after receipt of the complainant's denial of access complaint, which contained e-mails responsive to the complainant's request, the custodian conducted a second search and found records responsive to the complainant's request. The GRC held that the custodian had performed an inadequate search and thus unlawfully denied access to the responsive records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011).

Request Item No. 5

In the instant matter, the Custodian asserted that at the time of the response, no responsive records were located for request item No. 5 which sought settlement agreements between the Borough and current and former police officers. After receiving the instant complaint, the Custodian certified in the SOI that a settlement agreement was located and provided on October 20, 2021, stating that the record was misfiled. The facts here are on point with those in Schneble, 2, and follows that an insufficient search occurred.

Accordingly, the Custodian unlawfully denied access to the record responsive to Complainant's OPRA request item No. 5. N.J.S.A. 47:1A-6; Schneble, GRC 2007-220. Specifically, the Custodian's failure to locate responsive records until after she conducted an additional search following receipt of the Denial of Access Complaint resulted in an insufficient search. However, the GRC declines to order disclosure of the settlement agreement because the Custodian disclosed same to the Complainant on October 20, 2021, and as part of the SOI.

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.

Request Item Nos. 1 and 2

Additionally, the Council has previously held that criminal complaints and summonses are subject to disclosure. Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004); see also Mawhinney v. Egg Harbor City Police Dep't (Atlantic), GRC Complaint No. 2015-85 (January 2016).

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 or similar records as those at issue in the instant matter, with the custodian asserting that the records were not maintained by the Millville Police Department ("Millville PD") once its officers created and submitted the records through eCDR. Simmons, 247 N.J. at 32. The Court reversed the Appellate Division and found that the requested records were government records subject to disclosure under OPRA. Id. at 29. The Court found that notwithstanding which government branch created the CDR-1 and -2 forms, it is the information contained within those forms by Millville PD officers that is sought by AADARI. Id. at 40-41. Thus, the Court held that:

Because [Millville PD] 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.

[Id.]

Additionally, the Court rejected Millville PD'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. at 41. Thus, the Court found, "that the Judiciary might maintain on its servers the information that [Millville PD] made does not absolve [Millville PD] of its obligation to produce that information pursuant to a proper OPRA request made to [Millville PD]." Id. at 42.

In the instant matter, the Custodian failed to provide responsive records to the Complainant at the time of the request. The Complainant filed the instant matter on July 20, 2021, stating that the Custodian's non-disclosure was contrary to the Simmons decision. In the SOI, the Custodian asserted that once they received the instant complaint which included the Simmons decision, the Borough located and provided responsive records to the Complainant on October 20, 2021.

When considering the Court's decision in Simmons, the Custodian maintained the obligation to provide the Complainant with responsive records created by MPD. Notwithstanding whether MPD 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 were maintained by the Judiciary's electronic databases. Simmons, 247 N.J. at 42.

Accordingly, the Custodian unlawfully denied access to the requested complaints and summonses responsive to the Complainant's OPRA request item Nos. 1 and 2. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve responsive records created by MPD. See Simmons, 247 N.J. at 42. However, the Council declines to order disclosure since the evidence of record demonstrates that the Custodian provided the Complainant with responsive records on October 20, 2021, and as part of the SOI.

Request Nos. 3, 4, 6, 7, 8, 9

The Council has previously found that, where a custodian certified that no responsive records exist, no unlawful denial of access occurred. Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Complainant's OPRA request item Nos. 3, 4, 6, 7, and 8 sought various records pertaining to MPD and its current and former police officers. Additionally, a portion of the Complainant's OPRA request item No. 9 sought pension information of former police officers. The Custodian provided an insufficient response on July 12, 2021, by failing to assert whether responsive records exist. This complaint followed, wherein the Complainant asserted that the Custodian failed to provide any responsive records.

A review of the facts available to the GRC in this case supports that the Custodian lawfully denied access to OPRA request items Nos. 3, 4, 6, 7, 8, and 9 on the basis that no records existed. Specifically, the Custodian certified in the SOI that her office conducted an investigation to locate any and all records responsive to the request items, and none were found. Thus, in the absence of any competent, credible evidence to the contrary, a finding that no records existed is appropriate here.

Accordingly, notwithstanding the Custodian's insufficient response, she bore her burden of proof that she lawfully denied access to the Complainant's OPRA request item Nos. 3, 4, 6, 7, 8 and 9 in part. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist for each request item. N.J.S.A. 47:1A-6; see Pusterhofer, GRC 2005-49.

Prevailing Party Attorney's Fees

OPRA provides that:

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

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

In Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006), the Appellate Division held that a complainant is a "prevailing party" if he achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct. Id. at 432. Additionally, the court held that attorney's fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed. Id.

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

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

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

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

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

The Court in Mason, further held that:

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

[Id. at 76.]

In the instant matter, the Complainant sought complaints and summonses prepared by MPD pertaining to drug possession, drug paraphernalia, and DUI/DWI offenses. The Complainant also sought settlement agreements entered between the Borough and former and current police officers. The Custodian provided an insufficient response on July 12, 2021, by failing to affirm whether responsive records exist. The Complainant then filed the instant complaint on July 20, 2021, asserting that the Custodian failed to provide responsive records in accordance with Simmons, 247 N.J. 24. While the matter remained pending, the Custodian provided the Complainant with access to the requested records on October 20, 2021, and as part of the SOI.

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. The Custodian initially denied access to the Complainant's request, and did not reverse course until after the complaint was filed and she was made aware of the Simmons decision regarding access

to complaints and summonses. Further, the Custodian located a responsive settlement agreement after conducting an additional search. Thus, a causal nexus exists between this complaint and the change in the Custodian's conduct. Mason, 196 N.J. at 76. Accordingly, the Complainant is a prevailing party entitled to attorney's fees.⁶

Therefore, the Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Teeters, 387 N.J. Super. at 432. Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the Custodian did not provide the Complainant with the requested records until after the instant complaint was filed. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. See N.J.S.A. 47:1A-6, Teeters, 387 N.J. Super. at 432, and Mason, 196 N.J. at 76. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney's fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney's fees, Complainant's Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13(c).**

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's July 12, 2021 response was insufficient because the Custodian failed to provide a specific legal basis for denying access to the requested records and failed to address each request item. N.J.S.A. 47:1A-5(g). See also DeAppolonio v. Borough of Deal (Monmouth), GRC Complaint No. 2008-62 (September 2009) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008). However, the GRC declines to order disclosure of non-pension information responsive to request item No. 9 since the evidence of record demonstrates that the Custodian provided the Complainant with same on October 20, 2021, and as part of the Statement of Information ("SOI").
2. The Custodian unlawfully denied access to the record responsive to Complainant's OPRA request item No. 5. N.J.S.A. 47:1A-6; Schneble v. N.J. Dep't of Env'tl. Protection, GRC Complaint No. 2007-220 (April 2008). Specifically, the Custodian's failure to locate responsive records until after she conducted an additional search following receipt of the Denial of Access Complaint resulted in an insufficient search. However, the GRC declines to order disclosure of the settlement agreement because the Custodian disclosed same to the Complainant on October 20, 2021, and as part of the SOI.

⁶ The Council makes this determination with the understanding that the Complainant acted on behalf of a bona fide client at the time of the request. Although the Complainant's status as representing an actual client has been previously challenged, the available evidence on the record is insufficient to address that issue herein. See Owoh, Esq. (O.B.O. AADARI) v. Neptune City Police Dep't (Monmouth), GRC Complaint No. 2018-153 (April 2020) and Owoh, Esq. (O.B.O. AADARI) v. Freehold Twp. Police Dep't (Monmouth), GRC Complaint No. 2018-155 (Interim Order dated September 29, 2020).

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3. The Custodian unlawfully denied access to the requested complaints and summonses responsive to the Complainant's OPRA request item Nos. 1 and 2. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve responsive records created by the Maywood Police Department. See Simmons v. Mercado, 247 N.J. 24, 42 (2021). However, the Council declines to order disclosure since the evidence of record demonstrates that the Custodian provided the Complainant with responsive records on October 20, 2021, and as part of the SOI.
4. Notwithstanding the Custodian's insufficient response, she bore her burden of proof that she lawfully denied access to the Complainant's OPRA request item Nos. 3, 4, 6, 7, 8 and 9 in part. Specifically, the Custodian certified in the SOI, and the record reflects, that no responsive records exist for each request item. N.J.S.A. 47:1A-6; see Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).
5. 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 did not provide the Complainant with the requested records until after the instant complaint was filed. 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(c).**

Prepared By: Samuel A. Rosado
Staff Attorney

January 24, 2023