



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

May 30, 2023 Government Records Council Meeting

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

Complaint No. 2021-163

v.

Clinton Police Department (Hunterdon)
Custodian of Record

At the May 30, 2023 public meeting, the Government Records Council (“Council”) considered the May 23, 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. Recognizing that the Custodian’s June 11, 2021 response to the Complainant’s April 30, 2021 OPRA request is no longer a lawful denial pursuant to Libertarians for Transparent Gov’t v. Cumberland Cnty., 250 N.J. 46, 56-57 (2022), her response was nonetheless lawful at that time because it was consistent with the prevailing case law prior to the Court’s ruling. N.J.S.A. 47:1A-6; Libertarians for Transparent Gov’t v. Cumberland Cnty., 465 N.J. Super. 11 (App. Div. 2020); Moore v. N.J. Dep’t of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010). Thus, the Council declines to order disclosure here.
2. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian’s conduct. Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainants’ 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 certified that no additional records exist which contained the requested information, and the production of records without charge was in response to a separate OPRA request. Therefore, the Complainant is not 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.

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 30th Day of May 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: June 6, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 30, 2023 Council Meeting**

**Rotimi Owoh, Esq. (on behalf of Delores Simmons,
Obafemi Simmons, & Grace Woko)¹
Complainant**

GRC Complaint No. 2021-163

v.

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

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

1. Complaints 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. Names, date of hire, date of separation and reason for separation, salary at the time of separation who either resigned or retired or terminated or otherwise separated from 2002 to 2017 to the present. N.J.S.A. 47:1A-10. This request includes any agreement entered with each one of the separated police officer(s).
 - a. When stating the reason for separation, please note that some police officers separate due to plea deal, criminal convictions, criminal charges, sentences, and or other court agreement or court proceedings that require officers to be separated from your police department and or law enforcement jobs.
 - b. Some police officers separate due to internal affairs investigations within the police departments.³

Custodian of Record: Carla Connor

Request Received by Custodian: April 30, 2021

Response Made by Custodian: June 11, 2021; June 21, 2021; July 9, 2021

GRC Complaint Received: July 20, 2021

Background⁴

Request and Response:

On April 30, 2021, the Complainant submitted an Open Public Records Act (“OPRA”)

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

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

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

⁴ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Rotimi Owoh, Esq. (on behalf of Delores Simmons, Obafemi Simmons, & Grace Woko) v. Clinton Police Department (Hunterdon), 2021-163 – Findings and Recommendations of the Executive Director

request to the Custodian seeking the above-mentioned records. On June 11, 2021, the Custodian responded in writing providing a record containing the requested officer information responsive to item No. 2. The Custodian also provided a statement from Sgt. Harry P. Bugal Jr. of the Township of Clinton Police Department (“CPD”), who outlined the estimated special service charge needed to process records responsive to item No. 1. Therein, Sgt. Bugal stated that himself as the Administrative Division Commander (“ADC”) and the Confidential Secretary (“CS”) would perform 11.6 hours of labor at \$66.86 per hour, and 5.8 hours of labor at \$22.44 per hour, respectively. Sgt. Bugal then stated that the total estimated charge would be \$905.72.

On June 12, 2021, the Complainant responded to the Custodian, stating he did not see the reasons for separation of each police officer included with the production in response to item No. 2. The Complainant also asserted the estimated special service charge needed to process item No. 1 was excessive.

On June 21, 2021, the Custodian responded to the Complainant via e-mail, stating that the Township of Clinton (“Township”) did not possess records which stated the “reasons for separation” responsive to item No. 2. The Custodian also stated that Sgt. Bugal would submit a response regarding the special service charge.

On July 9, 2021, Sgt. Bugal provided a revised estimated special service charge. Sgt. Bugal stated that the CS would perform 17.4 hours of labor at \$22.44 per hour for a total of \$390.46. Sgt. Bugal further stated that he may need to review a fraction of the located records for potential redactions, and he estimated it would take one (1) hour at \$66.86. Sgt. Bugal therefore stated the total estimated charge would be \$457.32. Sgt. Bugal further stated there were an estimated 348 complaints to review, with a total of 794 pages.

Subsequent OPRA Request

On July 10, 2021, the Complainant submitted an OPRA request to the Custodian seeking the same records as those at issue in this complaint.

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 estimated special service charge for item No. 1 was excessive because the requested records were CDR-1s stored electronically, as evidenced by the Custodian providing the Complainant with complaints and summonses pertaining to other offenses without charge. The Complainant further argued that Simmons v. Mercado, 247 N.J. 24 (2021) made it clear that CDR-1 records were available electronically. The Complainant also noted that the Custodian reduced the estimated charge from its initial amount.

The Complainant also asserted that the Custodian’s response to item No. 2 did not include the “real reasons” for separation. The Complainant requested the GRC to compel the Custodian to comply fully with the OPRA request and award counsel fees.

Subsequent OPRA Request Response

On August 27, 2021, Sgt. Bugal responded to the Complainant's July 10, 2021 OPRA request on the Custodian's behalf, providing 794 pages of records without charge.

Statement of Information:⁵

On April 7, 2022, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on April 30, 2021. The Custodian certified that her search included retrieving records from the human resources department and requested various records from Sgt. Bugal. The Custodian certified that she responded in writing on June 11, 2021, providing records responsive to request item No. 1, and providing an estimated special service charge for item No. 2 as assessed by Sgt. Bugal.

The Custodian maintained she provided the Complainant with a record containing the requested personnel information and was not denied access. The Custodian argued that the Township did not possess records which contained the reasons an employee separates from the Township.

The Custodian also provided a certification from Sgt. Bugal. Sgt. Bugal certified that CPD was a small police department with a limited staff size. He further certified that his duties as the ADC went beyond handling records requests and included grant writing, officer training, background checks, firearms applicants and investigations, junk title requests, and serving as the Township's Drug Recognition Expert, fatal and serious crash investigator, and the department's hiring process. Sgt. Bugal certified that an OPRA request involving nearly 350 complaints of records would require an extraordinary expenditure of time and significantly impact CPD's daily functions. Sgt. Bugal also certified that he provided the Complainant with a detailed explanation for the special service charge. Sgt. Bugal certified that when the Complainant objected, he sent a revised charge with a reduced cost, but never received a response.

Sgt. Bugal next certified that the Complainant submitted a subsequent OPRA request on July 10, 2021, which sought the same records at issue in this matter. Sgt. Bugal certified that on August 27, 2021, he provided responsive records to the Complainant, which included records responsive to the request at issue, but without charge.

Additional Submissions:

On April 8, 2022, the Complainant submitted a brief in response to the Complainant's SOI. The Complainant initially asserted that he is a prevailing party since the Custodian has since

⁵ On August 3, 2021, this complaint was referred to mediation. On January 28, 2022, this complaint was referred back to the GRC for adjudication. Additionally, the Custodian included additional information regarding correspondence between the parties while this complaint was in mediation. Pursuant to the Uniform Mediation Act, N.J.S.A. 2A:23C-1 et seq., communications that take place during the mediation process are not deemed to be public records subject to disclosure under OPRA. N.J.S.A. 2A:23C-2. All communications which occur during the mediation process are privileged from disclosure and may not be used in any judicial, administrative or legislative proceeding, or in any arbitration, unless all parties and the mediator waive the privilege. N.J.S.A. 2A:23C-4.

abandoned the excessive special service charge and did so after the complaint was filed.

The Complainant next asserted that the Custodian failed to provide the “real reasons” for separation in response to item No. 1 of his request. The Complainant argued that the terms “terminated”, “retired”, or “resigned,” did not sufficiently provide the “reason for separation” because they were merely types of employment separations and did not adequately describe the underlying basis thereof. The Complainant argued that the “reason” for separation was likely located within a separate document constituting a government record, and the Custodian was obligated to retrieve that record, rather than create a spreadsheet or list containing the words “terminated”, “retired”, or “resigned.”

The Complainant next asserted that in many instances where a police officer is charged for crimes, they may enter a plea agreement which may require them to leave the police department or be removed from employment because of a conviction. The Complainant argued that it was insufficient for the Custodian to merely state the terms “retired”, “resigned”, or “terminated” as the reason for separation if the “real reason” was that the officer was compelled to separate as part of a plea agreement or sentence. The Complainant thus argued that the Custodian violated OPRA by not providing the “real reasons” for any of the separations listed.

The Complainant asserted that a guilty plea agreement between an officer and prosecutor is akin to a settlement agreement normally entered into in civil proceedings. Libertarians for Transparent Gov’t v. Cumberland Cnty., 465 N.J. Super. 11 (App. Div. 2020), rev’d, 250 N.J. 46 (2022). The Complainant argued that civil settlement agreements are subject to OPRA, and therefore guilty plea agreements should also be subject to OPRA in accordance with Libertarians.

The Complainant contended that the Township did not want to provide the “real reasons” for separation due to the pervasive culture and predisposition to protect officers convicted of misconduct. The Complainant argued that providing single word descriptions was only partially truthful and did not promote OPRA’s goal of transparency.

The Complainant asserted that as an example of police departments’ culture, he noted that in response to a similar OPRA request, Millville Police Department stated that two (2) officers “resigned” from the department. The Complainant asserted that in fact the two (2) officers pleaded guilty to criminal charges and as part of the agreement and sentencing they were required to be separated from the department.

The Complainant requested that the GRC compel the Custodian to comply fully and truthfully with the OPRA request. The Complainant also requested that the GRC declare the Complainant a prevailing party and award counsel fees.⁶

⁶ The Complainant further noted that access to the records should have been granted under the “common law ‘right to access public records’.” However, the GRC does not have the authority to address a requestor’s common law right to access records. N.J.S.A. 47:1A-7(b); Rowan, Jr. v. Warren Hills Reg’l Sch. Dist. (Warren), GRC Complaint No. 2011-347 (January 2013); Kelly v. N.J. Dep’t of Transp., GRC Complaint No. 2010-215 (November 2011). Thus, the GRC cannot address any common law right of access to the requested records. Rotimi Owoh, Esq. (on behalf of Delores Simmons, Obafemi Simmons, & Grace Woko) v. Clinton Police Department (Hunterdon), 2021-163 – Findings and Recommendations of the Executive Director

Analysis

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 No. 1

In the instant matter, the Complainant disputed the Custodian’s initial special service charge as excessive. The Custodian then offered a revised charge that was lower than the initial charge. Without addressing the revised charge, the Complainant filed the instant complaint, arguing that the records were available electronically and the charge was excessive. However, during the pendency of the complaint the Complainant submitted another OPRA request to the Custodian seeking the same records as those at issue. On August 27, 2021, the Custodian provided records that were responsive to both the subsequent request as well as the request at issue, but without imposing a special service charge. Therefore, the GRC declines to address the special service charge issue as moot.

Request Item No. 2

Generally, the GRC does not retroactively apply court decisions to complaints pursuant to Gibbons v. Gibbons, 86 N.J. 515 (1981). There the Court held that “it is a fundamental principle of jurisprudence that retroactive application of new laws involves a high risk of being unfair.” Id. at 522. In Moore v. N.J. Dep’t of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010), the custodian denied access to responsive records in 2009 based upon a then existing Executive Order, the custodial agency’s proposed regulations, and prior Council decisions relying on same. During the pendency of the complaint, the Appellate Division in 2010 reversed a separate Council decision relying on the Executive Order and proposed regulations. The Council held that while the custodian’s basis for denial was no longer valid, the denial was not unlawful since at the time the request was consistent with prior GRC case law. See also Biss v. Borough of New Providence Police Dep’t (Union), GRC Complaint No. 2009-21 (February 2010); Sallie v. N.J. Dep’t of Law & Public Safety, Div. of Criminal Justice, GRC Complaint No. 2008-21 (Interim Order dated June 23, 2009).

In the instant matter, the Complainant requested the “[n]ames, date of hire, date of separation and reason for separation and salary of individuals who either resigned or were terminated from your police department from 2020 to present” on April 30, 2021. The Complainant also requested any settlement agreements entered between the Township and any separated officer. On June 11, 2021, the Custodian provided a record containing the requested information, with the “reason for separation” for officers as “retired” and/or “resigned.” The Custodian certified that the Township possessed no other records which contain the reasons why an officer separated from the Township.

At the time of the Complainant's OPRA request and the Township's June 11, 2021 response, Libertarians, 465 N.J. Super. 11 was the precedential decision on an agency's obligation to disclose personnel records containing information subject to disclosure under N.J.S.A. 47:1A-10 ("Section 10"). In that case, the plaintiffs discovered through meeting minutes that a corrections officer was involved in a misconduct investigation along with several other officers. Id. at 13-14. The officer was originally going to be terminated but was allowed to "retire in good standing" after cooperating with the investigation in accordance with a settlement agreement. Id. The plaintiffs then submitted an OPRA request seeking the settlement agreement referenced in the minutes, and the officer's "name, title, position, salary, length of service, date of separation and the reason therefore" in accordance with Section 10. Id. The defendants declined to provide the settlement agreement, claiming it was a personnel record exempt from access. Id.

The plaintiffs challenged the denial of access to the settlement agreement, asserting that the defendants "misrepresent[ed] the 'reason' for Ellis's separation from public employment" and improperly withheld a government record. Id. at 15. The trial court ordered disclosure of the settlement agreement with redactions, and the Appellate Division reversed, finding that the record was exempt as a personnel record under Section 10.

During the pendency of this complaint, the New Jersey Supreme Court reversed the Appellate Division and ordered disclosure of the settlement agreement with redactions. Libertarians for Transparent Gov't v. Cumberland Cnty., 250 N.J. 46 (2022). The Court found that under OPRA, custodians were required to disclose the actual records containing the information required to be disclosed under Section 10. Id. at 56. The Court thus held that because the requested settlement agreement contained Section 10 information, the defendants were obligated to disclose the record with appropriate redactions. Id. at 57.

Since this Denial of Access Complaint was filed after Libertarians 465 N.J. Super. 11, the GRC must determine the applicable law at the time of the response. See Moore, GRC 2009-144. Here, the Custodian responded on June 11, 2021, providing the requested information pursuant to Section 10. In the SOI, the Custodian certified that the Township did not possess any other records containing the "real reasons" why officers separated from the Township, and she was not obligated to provide the personnel and disciplinary records containing the reasons for separation. Since the Custodian responded prior to the Supreme Court's decision, the Township was not obligated to provide the Complainant with the personnel and disciplinary records which contained the "reasons" for separation. See Libertarians, 465 N.J. Super. 11; Moore, GRC 2009-144.

Therefore, recognizing that the Custodian's June 11, 2021 response to the Complainant's April 30, 2021 OPRA request is no longer a lawful denial pursuant to Libertarians, 250 N.J. at 56-57, her response was nonetheless lawful at that time because it was consistent with the prevailing case law prior to the Court's ruling. N.J.S.A. 47:1A-6; Libertarians, 465 N.J. Super. 11; Moore, GRC 2009-144. Thus, the Council declines to order disclosure here.

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.]

Here, the Complainant sought in part “[n]ames, date of hire, date of separation and reason for separation, salary at the time of separation who either resigned or retired or terminated or otherwise separated from 2020 to the present,” as well as any “agreement” providing the “reason for separation.” The Custodian provided a list which stated the “reason for separation” as “retired” or “resigned,” for all identified officers. The Complainant then filed the instant complaint, asserting that the Custodian failed to provide the “real reason” for the officers’ separations. However, the Custodian responded and certified in the SOI that the Township did not possess any additional records containing the reasons for separation. Thus, the Complainant has not achieved the desired result for this request item.

Additionally, the Complainant filed the instant matter arguing the estimated special service charge imposed to provide records responsive to item No. 1 was excessive. However, during the pendency of the complaint, the Complainant submitted another request to the Township seeking the same records as those subject to the special service charge. Sgt. Bugal certified that on August 27, 2021, he provided the Complainant with responsive records to both requests without imposing a special service charge. Although the Complainant contended that the Township “abandoned” the special service charge after the complaint filing, the evidence of record shows that the records were incidentally included in response to the separate OPRA request, where the Township elected not to impose a special service charge. Therefore, the complaint was not the “causal nexus” which brought out the voluntary change in the Custodian’s conduct. Mason, 196 at 71. Accordingly, the Complainant is not a prevailing party in this complaint.

Therefore, the Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian’s conduct. Teeters, 387 N.J. Super. at 432. Additionally, no factual causal nexus exists between the Complainants’ filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 71. Specifically, the Custodian certified that no additional records exist which contained the requested information, and the production of records without charge was in response to a separate OPRA request.

Therefore, the Complainant is not 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 71.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. Recognizing that the Custodian's June 11, 2021 response to the Complainant's April 30, 2021 OPRA request is no longer a lawful denial pursuant to Libertarians for Transparent Gov't v. Cumberland Cnty., 250 N.J. 46, 56-57 (2022), her response was nonetheless lawful at that time because it was consistent with the prevailing case law prior to the Court's ruling. N.J.S.A. 47:1A-6; Libertarians for Transparent Gov't v. Cumberland Cnty., 465 N.J. Super. 11 (App. Div. 2020); Moore v. N.J. Dep't of Corr., GRC Complaint No. 2009-144 (Interim Order dated October 26, 2010). Thus, the Council declines to order disclosure here.
2. The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Teeters v. DYFS, 387 N.J. Super. 423, 432 (App. Div. 2006). Additionally, no factual causal nexus exists between the Complainants' 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 certified that no additional records exist which contained the requested information, and the production of records without charge was in response to a separate OPRA request. Therefore, the Complainant is not 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.

Prepared By: Samuel A. Rosado
Staff Attorney

May 23, 2023