



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**February 28, 2023 Government Records Council Meeting**

Rotimi Owoh, Esq.  
Complainant

Complaint No. 2021-165

v.

Town of West New York (Hudson)  
Custodian of Record

At the February 28, 2023 public meeting, the Government Records Council (“Council”) considered the February 21, 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 did not unlawfully deny access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, the Custodian disclosed to the Complainant all responsive records in the Town’s possession. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).
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 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 Complainant failed to achieve the relief sought in his Denial of Access Complaint. 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 28<sup>th</sup> Day of February 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: March 6, 2023**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
February 28, 2023 Council Meeting**

**Rotimi Owoh, Esq.<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-165**

v.

**Town of West New York (Hudson)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of:<sup>3</sup>

AADARI v. Adelinnny Plaza, et al – HUD-L-31-20 (App. Div. #A-792-20 T1) [(“Adelinnny Plaza”)]  
– For clarification, this is the case that is currently pending in the Appellate Division:

1. Each one of the of the legal invoices for legal services that were sent to the Town of West New York [(“Town”)] by Kevin Foltmer and/or Jorge De Arma and/or Robery Levy and or Scarinci & Holenbeck, LLC relating to the case above from 2020 through the present. This request includes but is not limited to services provided in the trial court, the Appellate Division and in the New Jersey Supreme Court.
2. Each one of the itemized billing statements for legal services that were sent to the [Town] by Kevin Foltmer and/or Jorge De Arma and/or Robery Levy and or Scarinci & Holenbeck, LLC relating to the case above from 2020 through the present.
3. Each one of the cancelled checks that were used by the [Town] to pay for each one of the invoices and services in items [1 and 2] above.

**Custodian of Record:** Adelinnny Plaza

**Request Received by Custodian:** July 6, 2021

**Response Made by Custodian:** July 15, 2021

**GRC Complaint Received:** July 20, 2021

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Angelo Auteri, Esq., of Scarinci & Holenbeck, LLC (Lyndhurst, NJ).

<sup>3</sup> The Complainant sought additional records that are not at issue in this complaint.

## **Background**<sup>4</sup>

### **Request and Response:**

On July 3, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 15, 2021, Tyara Conil responded on the Custodian’s behalf in writing providing responsive records.

Later that same day, the Complainant replied to the Custodian requesting clarification. The Complainant asked whether the responsive cancelled checks related only to the Adelinnny Plaza matter. The Custodian responded to the Complainant stating that she would forward the inquiry to the Town’s Finance Department for a response. The Complainant replied to the Custodian stating that the OPRA request specifically referred to the Adelinnny Plaza matter.

On July 16, 2021, the Custodian responded to the Complainant’s clarification request. The Custodian stated that after conferring with the Finance Department, payments issued by the Town were based on the invoices they receive and not based on individual litigation.

### **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 records provided on July 15, 2021 did not relate to the specific request for billing statements, itemized legal services, and cancelled checks from the Adelinnny Plaza litigation. The Complainant requested the GRC compel the Town to provide responsive records which specifically relate to the Adelinnny Plaza matter and to award counsel fees.

### **Statement of Information:**<sup>5</sup>

On April 5, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 6, 2021. The Custodian certified that Ms. Conil responded on her behalf in writing on July 15, 2021, providing responsive records.

The Custodian first argued the complaint was not ripe for adjudication. The Custodian asserted that the Complainant conceded that he possessed the responsive records provided by the Town, which were disclosed within the statutorily required seven (7) business days. N.J.S.A. 47:1A-5(i). The Custodian thus argued that the Town was not required to provide the Complainant with responsive records since they were already in his possession, citing Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609, 617-18 (App. Div. 2008). The Custodian also contended the

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<sup>4</sup> 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.

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

Complainant misrepresented to the GRC the records received from the Custodian by failing to attach all responsive records provided on July 15, 2021.

The Custodian next asserted that the Complainant failed to express any objection or issue with the provided records prior to filing the instant complaint. The Custodian asserted she highlighted specific portions of invoices and purchase orders to aid the Complainant in identifying information relevant to the request. However, the Custodian maintained she was under no duty to highlight this information.

The Custodian further argued the complaint was frivolous and an attempt to collect legal fees, based on the Complainant's lack of communication prior to filing same with the GRC. The Custodian asserted that had the Complainant contacted the Town with concerns regarding the records, she would have assisted him. The Custodian asserted the Complainant instead filed the instant complaint, alleging he was denied access to records that were in fact provided.

The Custodian requested the GRC dismiss the matter and deny the Complainant's request for attorney's fees.

#### Additional Submissions:

On April 21, 2022, the Complainant submitted a response the Custodian's SOI. The Complainant argued that New Jersey attorneys had ethical and legal obligations to keep an accurate accounting of billable hours in connection with each specific matter. The Complainant argued that the Custodian violated OPRA by failing to obtain records responsive to his specific request. Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010); Michalak v. Borough of Helmetta, GRC Complaint No. 2010-220 (date).<sup>6</sup>

The Complainant further noted that the Adelunny Plaza matter was recently decided in AADARI's favor by the Appellate Division and included a copy of the decision.<sup>7</sup> The Complainant also included a copy of a trial court decision in Mears v. Borough of Lawnside, 2022 N.J. Super. Unpub. LEXIS 195 (App. Div. 2022) that pertained to billable hours.

On April 27, 2022, the Custodian submitted a sur-reply to the Complainant. The Custodian initially asserted the Complainant largely restated arguments previously raised in his complaint.

The Custodian next argued the cases cited by the Complainant were irrelevant to the facts of the matter, contending that Burnett and Michalak involved issues where the Custodian denied access to a request based on whether the requested records were government records, or that records were denied based upon a stated exemption. The Custodian argued that in this matter, there was no denial as all responsive records were provided to the Complainant.

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<sup>6</sup> The Complainant also raised the issue that he should have been given access to the records under the "common law right of access." 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) at 2. Thus, the GRC cannot address any common law right of access to the requested records.

<sup>7</sup> AADARI v. Plaza, 2022 N.J. Super. Unpub. LEXIS 600 (App. Div. 2022).

The Custodian further argued the cases attached to the Complainant's response were also irrelevant. The Custodian argued the substance of the Adelinnny Plaza matter was irrelevant to the instant case as the Town did not argue that responsive records were not in its possession. The Custodian next asserted the Mears decision pertained to attorney invoices which had the entirety of its billing descriptions redacted under the attorney-client privilege exemption. The Custodian argued that the billing records provided to the Complainant were not redacted in a wholesale manner akin to those at issue in Mears.

The Custodian maintained this matter was not about a denial of access to records, but instead the Complainant's objection to the way in which the Town was billed for legal services. The Custodian argued such an issue was not appropriate for the GRC's consideration and not a valid basis to file a Denial of Access Complaint. The Custodian maintained the instant complaint was filed only to collect attorney's fees and should be dismissed.

## 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.

In Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010), the Council found that the custodian did not unlawfully deny access to the requested records based on the custodian's certification that all such records were provided to the complainant. The Council held that the custodian's certification, in addition to the lack of refuting evidence from the complainant, was sufficient to meet the custodian's burden of proof. See also Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).

Here, the Complainant requested invoices, billing statements, and cancelled checks pertaining to work committed for the Adelinnny Plaza matter. In response, the Custodian provided the Complainant with copies of invoices, billing statements, and cancelled checks with redactions therein. In the Denial of Access Complaint, the Complainant argued that the Custodian failed to provide responsive records because they were not specific to the Adelinnny Plaza matter. However, the Custodian certified in the SOI that the Town only received generalized billing statements and invoices; it also did not issue payments based on individual matters. Further, the Custodian was not obligated to create individualized invoices or billing statements by siphoning the relevant information those that existed to satisfy the Complainant's OPRA request. See MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). Thus, in the absence of individualized records, the evidence of record demonstrates the Custodian provided all responsive records to the Complainant. Danis, GRC 2009-156, *et seq.*; Burns, GRC 2005-68; Holland, GRC 2014-63.

Accordingly, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, the Custodian disclosed to the Complainant all responsive records in the Town's possession. Danis, GRC 2009-156, *et seq.*; Burns, GRC 2005-68; Holland, GRC 2014-63.

### **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 (7<sup>th</sup> 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 invoices, billing statements, and cancelled checks pertaining to the Adelenny Plaza matter. The Custodian responded on July 15, 2021, providing responsive records. The Complainant then filed the instant complaint on July 20, 2021, asserting that the Custodian did not provide records that pertained specifically to the Adelenny Plaza. However, the evidence of record indicates that the Custodian provided all responsive records to the Complainant. Thus, the Complainant has not achieved the desired result and is not a prevailing party in this complaint.<sup>8</sup>

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 Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Mason, 196 N.J. at 76. Specifically, the Complainant failed to achieve the relief sought in his Denial of Access Complaint. 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.

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<sup>8</sup> The GRC also notes that even if the Complainant “prevailed” in the matter, he would not be entitled to a reasonable attorney's fee pursuant to OPRA, as the evidence demonstrates he was not acting on behalf of a client. See Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006).



## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-6. Specifically, the Custodian certified, and the record reflects, the Custodian disclosed to the Complainant all responsive records in the Town's possession. Danis v. Garfield Bd. of Educ. (Bergen), GRC Complaint No. 2009-156, *et seq.* (Interim Order dated April 28, 2010); Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005); Holland v. Rowan Univ., GRC Complaint No. 2014-63, *et seq.* (March 2015).
  
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 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 Complainant failed to achieve the relief sought in his Denial of Access Complaint. 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

February 21, 2023