



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**April 25, 2023 Government Records Council Meeting**

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

Complaint No. 2021-202

v.

Lakehurst Police Department (Ocean)  
Custodian of Record

At the April 25, 2023 public meeting, the Government Records Council (“Council”) considered the April 18, 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 Complainant’s OPRA request item nos. 1 and 2 seeking a “record” do not identify a specific government record. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007); Feiler-Jampel v. Somerset Cnty. Prosecutor’s Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Furthermore, the request items seek information rather than identify a specific record. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009). Therefore, there was no unlawful denial of access. N.J.S.A. 47:1A-6.
2. The Custodian was not obligated to respond to the Complainant’s OPRA request item Nos. 3 and 4 in part. Said request items require the Custodian to locate and review a multitude of documents and determine which of those records are responsive to the request items; to wit, to conduct research. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Carter v. N.J. Dep’t of Cmty. Affairs, Div. of Local Gov’t Serv., 2019 N.J. Super. Unpub LEXIS 2510 at \*9-10 (App. Div. Dec. 10, 2019). See also Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013), and Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012). Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.
3. The Custodian lawfully denied access to the Complainant’s OPRA request item No. 4 in part seeking complaints pertaining to misconduct, harassment, excessive use of

force, or discrimination. N.J.S.A. 47:1A-6. Such records are exempt under OPRA's exemption for personnel records and information generated in connection with any grievance filed by or against an individual or public employee. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004); Wares v. Twp. of West Milford (Passaic), GRC Complaint No. 2014-274 (May 2015).

4. The Custodian unlawfully denied access to the requested complaints and summonses responsive to the Complainant's July 26, 2021 OPRA request item Nos. 5 and 6. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve responsive records created by the LPD. See Simmons v. Mercado, 247 N.J. 24, 42 (2021). The Custodian shall conduct a search for responsive records and provide same to the Complainant or notify that no responsive records exist.
5. **The Custodian shall comply with conclusion No. 4 above within ten (10) business days from receipt of the Council's Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, 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).**
6. 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 decide to obtain the responsive 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 25<sup>th</sup> Day of April 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: May 1, 2023**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
April 25, 2023 Council Meeting**

**Rotimi Owoh, Esq. (On Behalf of African American  
Data and Research Institute)<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-202**

v.

**Lakehurst Police Department (Ocean)<sup>2</sup>  
Custodial Agency**

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

1. Record showing the names, race and sex of individuals (offenders) who were detained by your police department for failure to pay for bail in the last five (5) years.
2. Record showing the names, race and sex of individuals (offenders) who were arrested or detained by your police department in the last five (5) years for failure to pay court fines.
3. [W]arrants that were executed by your police department for failure to pay court fines.
4. [C]omplaints that were filed against your Municipality (Township or City or Borough or Town or similar entity) for misconduct, harassment, hostile work environment, excessive use of force and or discrimination from 2014 to the present (last seven (7) years). Request includes complaints that were filed with your police department, filed in courts and or arbitration and or filed in administrative agencies.
  - a. Copy of settlement agreements relating to each one of the complaints.
  - b. Copy of the checks and invoices used to pay for damages and or settlements in each one of the complaints.
5. [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.
6. [D]riving While Intoxicated/Driving under the Influence (“DWI/DUI”) complaints and summonses prepared and or issued by your police department from January 2020 to present.

**Custodian of Record:** Maryanne Capasso

**Request Received by Custodian:** July 26, 2021

**Response Made by Custodian:** August 2, 2021

**GRC Complaint Received:** August 19, 2021

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<sup>1</sup> The Complainant represents the African American Data & Research Institute.

<sup>2</sup> Represented by Ian M. Goldman, Esq., of Levin, Shea, Pfeffer & Goldman, P.A. (Jackson, NJ).

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

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

### **Request and Response:**

On July 26, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 2, 2021, the Custodian responded in writing stating the Complainant needed to submit a judicial record request with the Manchester Township Court (“Municipal Court”) to obtain the records, as the Borough of Lakehurst (“Borough”) had a shared services agreement with same.

### **Denial of Access Complaint:**

On August 19, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted the request items were improperly denied but denying item Nos. 5 and 6 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). The Complainant requested the GRC compel compliance with each request item, and to award counsel fees.

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

On May 9, 2022, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 26, 2021. The Custodian certified that she responded in writing on August 2, 2021, denying the Complainant’s request and directing him to obtain the records from the Municipal Court.

The Custodian maintained she was following the orders from the Municipal Court’s Administrator. The Custodian asserted she would personally file a judicial records request to obtain the requested information.

## **Analysis**

### **Validity of Request**

Initially, the Council is permitted to raise additional defenses regarding the disclosure of records pursuant to *Paff v. Twp. of Plainsboro*, 2007 N.J. Super. Unpub. LEXIS 2135 (App. Div.), *certif. denied*, 192 N.J. 292 (2007).<sup>6</sup> In *Paff*, GRC 2005-29, the complainant challenged the GRC’s authority to uphold a denial of access for reasons never raised by the custodian. Specifically, the Council did not uphold the basis for the redactions cited by the custodian. The Council, on its own initiative, determined that the Open Public Meetings Act prohibited the disclosure of the redacted

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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 September 8, 2021, this complaint was referred to mediation. On January 28, 2022, this complaint was referred back to the GRC for adjudication.

<sup>6</sup> On appeal from *Paff v. Township of Plainsboro*, GRC Complaint No. 2005-29 (March 2006).

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portions to the requested executive session minutes. The Council affirmed the custodian's denial to portions of the executive session minutes but for reasons other than those cited by the custodian. The complainant argued that the GRC did not have the authority to do anything other than determine whether the custodian's cited basis for denial was lawful. On appeal, the court held that:

The GRC has an independent obligation to "render a decision as to whether the record which is the subject of the complaint is a government record which must be made available for public access pursuant to' OPRA . . . The GRC is not limited to assessing the correctness of the reasons given for the custodian's initial determination; it is charged with determining if the initial decision was correct."

[Paff, slip op. at 4.]

The court further stated that:

Aside from the clear statutory mandate to decide if OPRA requires disclosure, the authority of a reviewing agency to affirm on reasons not advanced by the reviewed agency is well established. Cf. Bryant v. City of Atl. City, 309 N.J. Super. 596, 629-30 (App. Div. 1998) (citing Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968) (lower court decision may be affirmed for reasons other than those given below)); Dwyer v. Erie Inv. Co., 138 N.J. Super. 93, 98 (App. Div. 1975) (judgments must be affirmed even if lower court gives wrong reason), certif. denied, 70 N.J. 142 (1976); Bauer v. 141-149 Cedar Lane Holding Co., 42 N.J. Super. 110, 121 (App. Div. 1956) (question for reviewing court is propriety of action reviewed, not the reason for the action), aff'd, 24 N.J. 139 (1957).

[Paff, slip op. at 4-5.]

Notwithstanding the Custodian's willingness to personally submit a judicial records request, the GRC must address the validity of request item Nos. 1-4 in whole or part. The GRC thus raises a *sua sponte* defense regarding the validity of these request items.

The New Jersey Appellate Division has held that:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records "readily accessible for inspection, copying, or examination."* N.J.S.A. 47:1A-1.

[MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).]

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past.* Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

[Id. at 549 (emphasis added).]

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt . . . . In short, OPRA does not countenance open-ended searches of an agency's files.” Id. (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>7</sup> N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

The validity of an OPRA request typically falls into three (3) categories. The first is a request that is overly broad (“any and all,” requests seeking “records” generically, *etc.*) because it fails to identify specific records, thus requiring a custodian to conduct research. MAG, 375 N.J. Super. 534; Donato, GRC 2005-182. The second is those requests seeking information or asking questions. See e.g. Rummel v. Cumberland Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2011-168 (December 2012). The final category is a request that is either not on an official OPRA request form or does not invoke OPRA. See e.g. Naples v. N.J. Motor Vehicle Comm’n, GRC Complaint No. 2008-97 (December 2008).

### Request Item Nos. 1 and 2

Regarding generic requests for “records,” the request at issue in MAG sought “all documents or records evidencing that the ABC sought, obtained or ordered revocation of a liquor license for the charge of selling alcoholic beverages to an intoxicated person in which such person, after leaving the licensed premises, was involved in a fatal auto accident” and “all documents or records evidencing that the ABC sought, obtained or ordered suspension of a liquor license exceeding 45 days for charges of lewd or immoral activity.” Id. at 539-540. The court noted that plaintiffs failed to include additional identifiers such as a case name or docket number. See also Steinhauer-Kula v. Twp. of Downe (Cumberland), GRC Complaint No. 2010-198 (March 2012) (holding that the complainant’s request item No. 2 seeking “[p]roof of submission” was invalid); Edwards v. Hous. Auth. of Plainfield (Union), GRC Complaint No. 2008-183, *et seq.* (April 2012) (accepting the Administrative Law Judge’s finding that a newspaper article attached to a subject OPRA request that was related to the records sought did not cure the deficiencies present in the request) Id. at 12-13.

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<sup>7</sup> Affirmed on appeal from Bent v. Stafford Police Department, GRC Complaint No. 2004-78 (October 2004). Rotimi Owoh, Esq. (on Behalf of African American Data and Research Institute) v. Lakehurst Police Department (Ocean), 2021-202 – Findings and Recommendations of the Executive Director

In Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007), the Council held that pursuant to MAG, a custodian is obligated to search his or her files to find identifiable government records listed in a requestor's OPRA request. The complainant in Donato requested all motor vehicle accident reports from September 5, 2005 to September 15, 2005. The custodian sought clarification of said request on the basis that it was not specific enough. The Council stated that:

Pursuant to [MAG], the Custodian is obligated to search her files to find the identifiable government records listed in the Complainant's OPRA request (all motor vehicle accident reports for the period of September 5, 2005 through September 15, 2005). However, the Custodian is not required to research her files to figure out which records, if any, might be responsive to a broad or unclear OPRA request. The word search is defined as "to go or look through carefully in order to find something missing or lost." The word research, on the other hand, means "a close and careful study to find new facts or information." (Footnotes omitted.)

[Id.]

Moreover, in Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008), the Council similarly held that a request seeking "[a]ny and all documents and evidence" relating to an investigation being conducted by the Somerset County Prosecutor's Office was invalid, reasoning that:

[B]ecause the records requested comprise an entire SCPO file, the request is overbroad and of the nature of a blanket request for a class of various documents rather than a request for specific government records. Because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to research the SCPO files to locate records potentially responsive to the Complainant's request pursuant to the Superior Court's decisions in [MAG], [Bent] and the Council's decisions in Asarnow v. Department of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 2006) and Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008).

[Id.]

Additionally, regarding requests seeking information or asking questions, in LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009), the complainant requested the number of Jamesburg residents that hold library cards. The GRC deemed that the complainant's request was a request for information, holding that ". . . because request Item No. 2 of the Complainant's June 25, 2008 OPRA request seeks information rather than an identifiable government record, the request is invalid pursuant to [MAG] . . ." Id. at 6. See also Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009).

In the instant matter, the Complaint's OPRA request item nos. 1 and 2 sought a "record" containing the "names, race and sex" of individuals who were detained or arrested by the Lakehurst



Police Department (“LPD”) over the last five (5) years for either failing to pay court fines or for failing to pay bail. As was the case in MAG, the request items fail to identify a specific government record, but instead seeks a generic document that may contain the requested information. See also Feiler-Jampel, GRC 2007-190. Furthermore, the request items seek data that does not specify a type of record, but rather information on individuals charged with certain offenses. Such a request is invalid under OPRA. See LaMantia, GRC 2008-140.

Therefore, the Complainant’s OPRA request item nos. 1 and 2 seeking a “record” do not identify a specific government record. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; Donato, GRC 2005-182; Feiler-Jampel, GRC 2007-190. Furthermore, the request items seek information rather than identify a specific record. LaMantia, GRC 2008-140; Ohlson, GRC 2007-233. Therefore, there was no unlawful denial of access. N.J.S.A. 47:1A-6.

Item Nos. 3 and 4 in part

With respect to requests requiring research, the distinction between search and research is fact sensitive. That is, there are instances where the very specificity of a request requires only a search. As the Council determined in Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013), “. . . a valid OPRA request requires a search, not research . . . what will be sufficient to determine a proper search will depend on how detailed the OPRA request is, and will differ on a case-by-case basis. What a custodian is not required to do, however, is to actually read through numerous [records] to determine if same is responsive: in other words, conduct research.”

Additionally, the court in Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), evaluated a request for “[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. The Appellate Division determined that the request was not overly broad because it sought a specific type of document, despite failing to specify a particular case to which such document pertained. Id. at 515-16. Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) found a request for communications regarding the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. Id. at 176.

Conversely, there are instances where a request can be specific enough to induce research, thus rendering it invalid. For instance, in Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012), the complainant submitted four (4) OPRA requests seeking copies of meeting minutes containing motions to approve other minutes. The Council, citing Taylor v. Cherry Hill Bd. of Educ. (Camden), GRC Complaint No. 2008-258 (August 2009) and Ray v. Freedom Academy Charter Sch. (Camden), GRC Complaint No. 2009-185 (August 2010), determined that the requests were overly broad:

[S]aid requests do not specify the date or time frame of the minutes sought. Rather, the requests seek those minutes at which the UCBOE motioned to approve meeting minutes for four (4) other meetings. Similar to the facts of both Taylor and Ray, the requests herein *seek minutes that refer to a topic and would require the Custodian*

to research the UCBOE's meeting minutes in order to locate the particular sets of minutes that are responsive to the Complainant's requests . . . because the Complainant's four (4) requests for minutes "that include a motion made by the Union City Board of Education to approve the minutes" from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant's requests are invalid under OPRA.

[Valdes, GRC 2011-147 *et seq.* (emphasis added) (citing N.J. Builders Ass'n, 390 N.J. Super. at 180; Bent, 381 N.J. Super. at 37; MAG, 375 N.J. Super. at 546; Schuler, GRC 2007-151; Donato, GRC 2005-182. See also Valdes v. Gov't Records Council, GRC Complaint No. 2013-278 (September 2014).]

In Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015), the court's rationale of what amounted to research supports the Council's decision in Valdes. There, the court reasoned that the plaintiff's request:

[W]ould have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher.

[Id. at 237.]

More recently, in Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub LEXIS 2510 (App. Div. Dec. 10, 2019)<sup>8</sup>, the complainant requested docketing records stemming from an appeal of an agency's final decision pertaining to a specific statute. The GRC found the request to be invalid, as it would cause the custodian to conduct research. On appeal, the court found that the request lacked a case name, party name, or docket number. The court also found that the records required the custodian "to search through thousands of cases to identify documents relevant to the request." Slip op. at \*9-10. The court further found that the custodian would have to review each file to determine whether it was applicable to the specific issue identified by the complainant. The court therefore held that the request was invalid under OPRA.

Here, the Custodian's OPRA request item No. 3 sought in part "warrants" executed by LPD for failure to pay court fines. Although the Council has previously held that warrants are an identifiable record, see Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013), the Complainant fails to identify an individual or even a date range. Moreover, by specifically requesting warrants pertaining to an individual's "failure to pay court fines," the request item requires the Custodian to locate and review every warrant executed by

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<sup>8</sup> Affirmed on appeal from Carter v. N.J. Dep't of Cmty. Affairs, GRC Complaint No. 2016-262 (August 2018). Rotimi Owoh, Esq. (on Behalf of African American Data and Research Institute) v. Lakehurst Police Department (Ocean), 2021-202 – Findings and Recommendations of the Executive Director

LPD in its history to determine whether they pertained to that alleged offense. As noted in Carter: “[s]uch an endeavor constitute[s] research, not a search, Burnett, 415 N.J. Super. at 515, which goes beyond what OPRA requires.” Slip op. at \*10.

Additionally, the Complainant’s OPRA request item No. 4 sought in part “complaints” filed in court, arbitration, or with administrative agencies against the LPD for misconduct, harassment, use of force, or discrimination over a seven (7) year period. Additionally, the request item sought “settlement agreements” between the Borough and terminated police officers in relation to those complaints, along with any related “invoice” or “check.” Like the Carter request, this portion of item No. 4 requires the Custodian to conduct research by searching through seven (7) years of records, and reviewing each complaint filed against the Borough in court, arbitration, or administrative agency to determine whether they pertained to misconduct, et al. Furthermore, such research would necessarily be a prerequisite before determining whether a settlement agreement, invoice, or check exists as a result of locating an applicable complaint. Thus, this portion of the Complainant’s request also requires the Custodian to act beyond what is required under OPRA.

Therefore, the Custodian was not obligated to respond to the Complainant’s OPRA request item Nos. 3 and 4 in part. Said request items require the Custodian to locate and review a multitude of documents and determine which of those records are responsive to the request items; to wit, to conduct research. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; Lagerkvist, 443 N.J. Super. at 236-37; Carter, slip op. at \*9-10. See also Verry, GRC 2013-43 and 2013-53, and Valdes, GRC 2011-147 *et seq.* Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.

### **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.

#### **Item No. 4 in part**

OPRA provides that “[a] government record shall not include . . . information generated by or on behalf of public employers or public employees in connection . . . with any grievance filed by or against an individual . . .” N.J.S.A. 47:1A-1.1. OPRA further provides that:

Notwithstanding the provisions [OPRA] or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access . . .

[N.J.S.A. 47:1A-10.]

OPRA begins with a presumption against disclosure and “proceeds with a few narrow exceptions that . . . need to be considered.” Kovalcik v. Somerset Cnty. Prosecutor’s Office, 206 N.J. 581, 594 (2011). In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004), the Council held that:

[t]he Complainant’s request to review the records of complaints filed against Officer Tuttle were properly denied by the Custodian. N.J.S.A. 47:1A-10 provides in pertinent [part] that “the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a public record and shall not be made available for public access” [emphasis omitted]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.

[Id. See also Wares v. Twp. of West Milford (Passaic), GRC Complaint No. 2014-274 (May 2015)].

Here, the Complainant’s OPRA request item No. 4 sought access to “complaints” filed against the LPD pertaining to misconduct, harassment, excessive use of force, or discrimination over a seven (7) year period. Upon review, the case law is clear that these “complaints” sought by the Complainant were exempt under N.J.S.A. 47:1A-10 as they pertain to allegations of misconduct by one or more police officers employed by the Borough. Merino, GRC 2003-110; Wares, GRC 2014-274. For these reasons, the GRC is satisfied that the Custodian lawfully denied access to this portion of the Complainant’s OPRA request.

Therefore, the Custodian lawfully denied access to the Complainant’s OPRA request item No. 4 in part seeking complaints pertaining to misconduct, harassment, excessive use of force, or discrimination. N.J.S.A. 47:1A-6. Such records are exempt under OPRA’s exemption for personnel records and information generated in connection with any grievance filed by or against an individual or public employee. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Merino, GRC 2003-110; Wares, GRC 2014-274.

#### Item Nos. 5 & 6

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 (“MPD”) 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 MPD officers that is sought by AADARI. Id. at 40-41. Thus, the Court held that:

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

[Id.]

Additionally, the Court rejected MPD's argument that they did not maintain the records, holding that OPRA's definition of a government record is not restricted to records maintained by the agency, but rather includes records it creates, even if not maintained. Id. at 41. Thus, the Court found, "that the Judiciary might maintain on its servers the information that MPD made does not absolve MPD of its obligation to produce that information pursuant to a proper OPRA request made to MPD." Id. at 42.

In the instant matter, the Custodian responded to the Complainant on August 2, 2021, stating he needed to submit a judicial records request to the Municipal Court to obtain records responsive to item Nos. 5 and 6. The Complainant filed the instant matter on August 19, 2021, stating the Custodian's response was contrary to the Simmons decision. In the SOI, the Custodian asserted she was following the Municipal Court Administrator's orders, but will personally file a judicial record request to obtain the information.

When considering the Court's decision in Simmons, the Custodian maintained the obligation to provide the Complainant with responsive records created by the Borough's police department. Notwithstanding whether the Borough maintained physical copies of same, the Court held that since police departments created the CDR-1s and CDR-2s when inputting information, they were government records even if the records 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 July 26, 2021 OPRA request item Nos. 5 and 6. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve responsive records created by the LPD. See Simmons, 247 N.J. at 42. The Custodian shall conduct a search for responsive records and provide same to the Complainant or notify that no responsive records exist.

### **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’s OPRA request sought in part complaints and summonses prepared by LPD pertaining to drug possession, drug paraphernalia, and DUI/DWI. The Custodian responded on August 2, 2021, stating the Complainant should file a request with the Municipal Court. The Complainant then filed the instant complaint on August 19, 2021, asserting the Custodian should have obtained the records via LPD in accordance with the Court’s ruling. In the SOI, the Custodian stated she was prepared to file a judicial records request to obtain the records.

In determining whether the Complainant is a prevailing party entitled to attorney’s fees, the GRC is satisfied that the evidence of record supports a conclusion in the affirmative. The Custodian denied access to the Complainant’s request by directing him to the Municipal Court. It was only after the complaint was filed that the Custodian reversed course and expressed her intent to locate and obtain the requested records. 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.<sup>9</sup>

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 decide to obtain the responsive 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).**

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<sup>9</sup> 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).

Rotimi Owoh, Esq. (on Behalf of African American Data and Research Institute) v. Lakehurst Police Department (Ocean), 2021-202 – Findings and Recommendations of the Executive Director

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Complainant's OPRA request item nos. 1 and 2 seeking a "record" do not identify a specific government record. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007); Feiler-Jampel v. Somerset Cnty. Prosecutor's Office, GRC Complaint No. 2007-190 (Interim Order dated March 26, 2008). Furthermore, the request items seek information rather than identify a specific record. LaMantia v. Jamesburg Pub. Library (Middlesex), GRC Complaint No. 2008-140 (February 2009); Ohlson v. Twp. of Edison (Middlesex), GRC Complaint No. 2007-233 (August 2009). Therefore, there was no unlawful denial of access. N.J.S.A. 47:1A-6.
2. The Custodian was not obligated to respond to the Complainant's OPRA request item Nos. 3 and 4 in part. Said request items require the Custodian to locate and review a multitude of documents and determine which of those records are responsive to the request items; to wit, to conduct research. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015); Carter v. N.J. Dep't of Cmty. Affairs, Div. of Local Gov't Serv., 2019 N.J. Super. Unpub LEXIS 2510 at \*9-10 (App. Div. Dec. 10, 2019). See also Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013), and Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint Nos. 2011-147, 2011-157, 2011-172, and 2011-181 (July 2012). Thus, there was no unlawful denial of access. N.J.S.A. 47:1A-6.
3. The Custodian lawfully denied access to the Complainant's OPRA request item No. 4 in part seeking complaints pertaining to misconduct, harassment, excessive use of force, or discrimination. N.J.S.A. 47:1A-6. Such records are exempt under OPRA's exemption for personnel records and information generated in connection with any grievance filed by or against an individual or public employee. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-10; Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004); Wares v. Twp. of West Milford (Passaic), GRC Complaint No. 2014-274 (May 2015).
4. The Custodian unlawfully denied access to the requested complaints and summonses responsive to the Complainant's July 26, 2021 OPRA request item Nos. 5 and 6. N.J.S.A. 47:1A-6. Specifically, the Custodian had an obligation to locate and retrieve responsive records created by the LPD. See Simmons v. Mercado, 247 N.J. 24, 42 (2021). The Custodian shall conduct a search for responsive records and provide same to the Complainant or notify that no responsive records exist.



5. **The Custodian shall comply with conclusion No. 4 above within ten (10) business days from receipt of the Council’s Final Decision. In the circumstance where the records ordered for disclosure are not provided to the Complainant, 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).**
  
6. 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 decide to obtain the responsive 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

April 18, 2023