



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

June 27, 2023 Government Records Council Meeting

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

Complaint No. 2021-213

v.
City of Bayonne (Hudson)
Custodian of Record

At the June 27, 2023 public meeting, the Government Records Council (“Council”) considered the June 20, 2023 Supplemental 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 fully comply with the Council’s April 25, 2023 Interim Order. Specifically, although the City disclosed the responsive cancelled checks to the Complainant and provided certified confirmation of compliance to the Executive Director, she failed to provide same within the extended time frame.
2. The Complainant has failed to establish in his request for reconsideration of the Council’s April 25, 2023 Final Decision that either 1) the Council’s decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant failed to establish that the issue was already addressed in previous matters or was raised in bad faith. Thus, the Complainant’s request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). Thus, conclusion No. 3 of the Council’s April 25, 2023 Interim Order remains in effect.

Interim Order Rendered by the
Government Records Council
On The 27th Day of June 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 29, 2023

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration

**Supplemental Findings and Recommendations of the Executive Director
June 27, 2023 Council Meeting**

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

GRC Complaint No. 2021-213

v.

**City of Bayonne (Hudson)²
Custodial Agency**

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

AADARI v. Madeline Medina, et al – HUD-L-4981-19 (App. Div. #A-4218-19 T2) [(“Madeline Medina”)] – For clarification, this is the case that is currently pending in the Appellate Division:

1. Each one of the cancelled checks that were used by the City of Bayonne [(“City”)] to pay for each one of the invoices and services in items [. . .] above.

Custodian of Record: Madeline Medina

Request Received by Custodian: July 6, 2021

Response Made by Custodian: July 7, 2021

GRC Complaint Received: August 30, 2021

Background

April 25, 2023 Council Meeting:

At its April 25, 2023 public meeting, the Council considered the March 21, 2023⁴ 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, found that:

1. The Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010); Libertarians for Transparent Gov’t v. Borough of Westwood (Bergen), GRC Complaint No. 2016-214 (Interim Order dated October 30, 2018). The Custodian shall locate and

¹ The Complainant represents the African American Research & Data Institute (“AADARI”).

² Represented by Graham K. Staton, Esq., of Inglesino, Webster, Wyciskala & Taylor, LLC (Parsippany, NJ).

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

⁴ This complaint was prepared for adjudication at the Council’s March 28, 2023 meeting, but could not be adjudicated due to lack of quorum.

retrieve the records from New Jersey Intergovernmental Insurance Fund and provide same to the Complainant. Should no responsive records exist, the Custodian shall certify to same.

2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁵ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁶ to the Executive Director.⁷**
3. Because of the limited factual record, this complaint should be referred to the Office of Administrative Law ("OAL") for a fact-finding hearing to determine the relationship between the Complainant and alleged client African American Data and Research Institute ("AADARI") based on the standard set forth in Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517 (App. Div. 2011). See Owoh, Esq. (O.B.O. AADARI) v. Neptune Police Dep't (Monmouth), GRC Complaint No. 2018-153 (April 2020). Additionally, the OAL should also determine whether AADARI, the organization the Complainant purportedly represents, is legitimate. Should the OAL ultimately find that AADARI is legitimate, and that the Complainant is legally representing them, the OAL shall determine whether the Complainant is a prevailing party and if so, the reasonable fee amount.

Procedural History:

On April 27, 2023, the Council distributed its Interim Order to all parties. On April 28, 2023, the Complainant requested additional time to submit a request for reconsideration. On May 9, 2023, the GRC granted the Complainant's request for an extension until May 25, 2023.

Compliance:

On May 9, 2023, the Custodian's Counsel requested an extension of time to respond to the Council's Order. On May 11, 2023, the GRC granted an extension until May 25, 2023.

Request for Reconsideration:

On May 24, 2023, the Complainant requested another extension of time until June 14, 2023 to submit a request for reconsideration. That same day, the GRC granted a final extension until

⁵ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁶ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁷ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

June 2, 2023.

On June 2, 2023, the Complainant filed a request for reconsideration of the Council's April 25, 2023 Order. The Complainant did not check a category indicating the reason for reconsideration on the form but nevertheless included a brief in support of same.

Before expressing the legal arguments in favor of reconsideration, the Complainant provided a background of interactions between himself and Custodian's Counsel. The Complainant contended that Custodian's Counsel previously lost in court to AADARI in Madeline Medina, which was directly related to the instant matter. The Complainant asserted that the City of Bayonne ("City") would go on to lose at the Appellate Division and ordered to pay counsel fees. The Complainant next contended that Custodian's Counsel lost against AADARI while representing another municipality in Owoh, Esq. (O.B.O. D.S., B.S., & G.W.) v. Twp. of Nutley (Essex), GRC Complaint No. 2020-47 (December 2022). The Complainant thus argued the only reason Custodian's Counsel would raise the client issue again in this matter was a racial bias against the Complainant and AADARI.

The Complainant first argued that the GRC already possessed at least two (2) notarized certifications from Grace Woko attesting to the attorney-client relationship between the Complainant and AADARI. The Complainant contended the GRC therefore possessed sufficient evidence of the relationship, and should accord certifications prepared by a black woman the same evidentiary weight as those prepared by white individuals under the law. The Complainant included another notarized certification from Ms. Woko dated May 19, 2023, prepared in response to the Council's Order.

The Complainant next contended the GRC already possessed a notarized certification from Baffi Simmons attesting to the attorney-client relationship between the Complainant and AADARI. The Complainant asserted the GRC possessed sufficient evidence of the relationship and like Ms. Woko's certifications should accord the same evidentiary weight as certifications prepared by white individuals. The Complainant also included another notarized certification from Mr. Simmons dated May 19, 2023, prepared in response to the Council's Order.

The Complainant further asserted that the issue of counsel fees between the City and AADARI have been settled under the doctrines of collateral estoppel and *res judicata*. The Complainant contended that Custodian's Counsel and the City were precluded from relitigating the issue of counsel fees due to their unsuccessful challenges at the trial court and Appellate Division. See Madeline Medina. The Complainant further noted that Custodian's Counsel's clients had paid more than \$10,000 in counsel fees while the instant matter was pending before the GRC.

The Complainant next asserted that Mr. Simmons and Ms. Woko were "persons" under OPRA and the GRC should not impose a separate standard of awarding counsel fees for black and white individuals. The Complainant again contended that the notarized certifications from Mr. Simmons and Ms. Woko were sufficient evidence to show there was an attorney-client relationship between the Complainant and AADARI. The Complainant again contended that Custodian's Counsel failed to provide evidence that the Complainant and Mr. Simmons or Ms. Woko were the same person.

The Complainant next argued that attorneys representing municipalities in several other GRC complaints paid counsel fees to the Complainant, and never raised the issue of fraud against same. The Complainant also noted that three (3) GRC matters involving AADARI were transferred to the Office of Administrative Law (“OAL”), and in all three (3) the attorneys and municipalities decided to pay counsel fees to settle the matter.

The Complainant next contended the GRC possessed a certificate issued by the New Jersey Department of Treasury evidencing that AADARI was an active and registered legal entity in the State. The Complainant also asserted that the certificate was subject to judicial notice under the rules of evidence, and not a mere allegation. The Complainant further asserted there was no requirement that AADARI provide the GRC with a tax return or any other documentation.

Compliance (cont’d):

On June 5, 2023, the Custodian responded to the Council’s Interim Order attaching a certification. Therein, the Custodian certified that upon receiving the Order she contacted the New Jersey Intergovernmental Insurance Fund to obtain copies of the requested checks. The Custodian certified that the checks she received from NJIIF were attached to the certification, with redactions made to banking information.

Request for Reconsideration (cont’d):

On June 6, 2023, Custodian’s Counsel submitted objections to the request for reconsideration. Custodian’s Counsel asserted that Complainant’s brief failed to provide an argument supporting the request for reconsideration, and the allegations of racial animus should be disregarded. Custodian’s Counsel contended that the issues raised by the Complainant were at best evidentiary questions to be resolved through a fact-finding hearing at the OAL.

Custodian’s Counsel maintained that AADARI was a “sham entity” used by the Complainant for personal gain and using the organization as an “alter ego” for personal purposes. Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517-19 (App. Div. 2011). Custodian’s Counsel contended that due to the limited factual record, a fact-finding hearing was necessary to determine the relationship between the Complainant and AADARI and whether to pierce the corporate veil pursuant to Sean Wood, LLC. Custodian’s Counsel contended that the May 2023 certifications were an attempt to avoid a fact-finding hearing and should not be considered by the GRC, but instead could be presented as evidence before an OAL judge.

Custodian’s Counsel next contended that the doctrine of collateral estoppel was not applicable in the instant matter. Custodian’s Counsel asserted collateral estoppel prohibits re-litigation of an issue if five (5) elements are met:

- (1) the issue to be precluded is identical to the issue decided in the prior proceeding;
- (2) the issue was actually litigated in the prior proceeding;
- (3) the court in the prior proceeding issued a final judgement on the merits;
- (4) the determination of the issue was essential to the prior judgement; and
- (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

[Adelman v. BSI Fin. Servs., Inc., 453 N.J. Super. 31, 40 (App. Div. 2018) (quoting Allen v. V & A Bros., Inc., 208 N.J. 114, 137 (2011).]

Custodian’s Counsel contended that the elements have not been met. Custodian’s Counsel initially noted that the Madeline Medina case was unrelated to the instant matter, involving separate and distinct OPRA requests. Next, Custodian’s Counsel asserted that the counsel fee award was challenged in Madeline Medina on the basis that the Complainant was not a “prevailing party.” Custodian Counsel asserted that the issue of whether AADARI was a legitimate entity entitled to counsel fees under OPRA had not yet been addressed, and the trial court did not contemplate whether the City could pierce the corporate veil.

Custodian’s Counsel next contended that the doctrine of *res judicata* was not applicable in the instant matter. Custodian’s Counsel asserted that *res judicata* broadly referred to the common law doctrine barring re-litigation of claims or issues that have already been adjudicated. Velasquez v. Franz, 123 N.J. 498, 505 (1991). Custodian’s Counsel asserted that the application of *res judicata* requires substantially similar or identical causes of actions and issues, parties, and relief sought. Eatough v. Bd. of Med. Exam’rs, 191 N.J. Super. 166, 173 (App. Div. 1983). Custodian’s Counsel further asserted there must also be a “final judgment by a court or tribunal of competent jurisdiction.” Charlie Brown of Chatham v. Bd. of Adjustment, 202 N.J. Super. 312, 327 (App. Div. 1985).

Custodian’s Counsel again contended that the issue of whether AADARI was a legitimate entity entitled to fees has yet to be litigated, and the trial court in Madeline Medina did not issue a decision on the merits of whether the City could pierce the corporate veil. Custodian’s Counsel thus argued that *res judicata* was not applicable in this matter.

On June 8, 2023, and absent a request or permission from the GRC, the Complainant submitted a “supplemental support” for his request for reconsideration. The submission contained what appears to be evidence of payments issued to the Complainant for counsel fees from forty (40) GRC matters involving AADARI. The submission also contained a letter from the IRS to AADARI informing of the organization’s Employer Identification Number (“EIN”). The Complainant also included a copy of an order from the Honorable Judge Benjamin C. Telsey in another matter between AADARI and a municipality, in which Judge Telsey held that the municipality “failed to establish that [the Complainant] is attempting to improperly obtain attorney fees on behalf of a client.”

Analysis

Compliance

At its April 25, 2023 meeting, the Council ordered the Custodian to locate and disclose the requested cancelled checks to the Complainant. The Council noted that should no records exist, the Custodian should certify to same. The Council further ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4, to the Executive Director. On April 27, 2023, the Council distributed its Interim Order to all parties, providing the

Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian's response was due by close of business on May 2, 2023.

On May 9, 2023, the tenth (10th) business day after receipt of the Council's Order, the Custodian requested an extension of time to respond. On May 11, 2023, the GRC granted the extension until May 25, 2023.

On June 5, 2023, six (6) days after the end of the extended deadline, the Custodian responded to the Council's Order, providing the Complainant with the requested cancelled checks. The Custodian also provided certified confirmation of compliance to the Executive Director. Based on the forgoing, the Custodian did not fully comply with the Council's Order due to a timeliness issue.

Therefore, the Custodian did not fully comply with the Council's April 25, 2023 Interim Order. Specifically, although the City disclosed the responsive cancelled checks to the Complainant and provided certified confirmation of compliance to the Executive Director, she failed to provide same within the extended time frame.

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the Complainant filed the request for reconsideration of the Council's Order dated April 25, 2023 on June 2, 2023, twenty-five (25) business days from the issuance of the Council's Order.

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, . . . 242 N.J. Super. at 401. “Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.” Ibid.

[In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A

Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain
A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J.
PUC LEXIS 438, 5-6 (N.J. PUC 2003).]

Upon review, the Complainant's request for reconsideration should be declined. Initially, the Complainant failed to mark a category indicating the reason for reconsideration. Nevertheless, the Complainant's own exhibits further underscore the need for a fact-finding hearing before the OAL.

The GRC notes that the Complainant's submission is laced with disparaging and highly unprofessional attacks against Custodian's Counsel, primarily accusing same of being racially biased against the Complainant and AADARI. Notwithstanding, the Complainant's arguments ignore what was proffered by the Custodian's Counsel, which requested the GRC to take judicial notice of submissions and arguments raised in Owoh, Esq. (O.B.O. AADARI) v. Neptune Police Dep't (Monmouth), GRC Complaint No. 2018-153 (April 2020).

The Complainant insists the certifications from Mr. Simmons and Ms. Woko confirm he and they are not one and the same, however that is not the argument raised by Custodian's Counsel. Rather, Custodian's Counsel contends the organization the Complainant represents, and of whom Mr. Simmons and Ms. Woko are officers, is illegitimate and used as a cover to improperly obtain counsel fees. Spurious allegations of racial bias aside, neither Custodian's Counsel nor the GRC are giving Mr. Simmons's and Ms. Woko's certifications less weight than other individuals. On the contrary, because equal weight is being given to all parties, the GRC is providing due process to the parties by sending this matter to the OAL so that a judge can conduct a full fact-finding hearing.

Furthermore, the GRC rejects the contention that this specific issue has been previously addressed and resolved. In none of the submissions provided by the Complainant was there a factual record in which an opposing party specifically raised the issue of whether AADARI was a legitimate entity, or a shell organization used as a vehicle to obtain counsel fees. Moreover, the fact that this issue was not raised by other municipalities in prior GRC complaints does not preclude Custodian's Counsel from raising same in this matter, nor was it evidence of AADARI's legitimacy. Thus, the GRC does not find that the issue raised by Custodian's Counsel was barred by the doctrines of collateral estoppel or *res judicata*.

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. See Cummings, 295 N.J. Super. at 384. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. See D'Atria, 242 N.J. Super. at 401. Specifically, the Complainant failed to establish that the issue was already addressed in previous matters or was raised in bad faith. Thus, the Complainant's request for reconsideration should be denied. Cummings, 295 N.J. Super. at 384; D'Atria, 242 N.J. Super. at 401; Comcast, 2003 N.J. PUC at 5-6. Thus, conclusion No. 3 of the Council's April 25, 2023 Interim Order remains in effect.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian did not fully comply with the Council's April 25, 2023 Interim Order. Specifically, although the City disclosed the responsive cancelled checks to the Complainant and provided certified confirmation of compliance to the Executive Director, she failed to provide same within the extended time frame.

2. The Complainant has failed to establish in his request for reconsideration of the Council's April 25, 2023 Final Decision that either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant failed to establish that the issue was already addressed in previous matters or was raised in bad faith. Thus, the Complainant's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003). Thus, conclusion No. 3 of the Council's April 25, 2023 Interim Order remains in effect.

Prepared By: Samuel A. Rosado
Staff Attorney

June 20, 2023



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

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

INTERIM ORDER

April 25, 2023 Government Records Council Meeting

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

Complaint No. 2021-213

v.
City of Bayonne (Hudson)
Custodian of Record

At the April 25, 2023 public meeting, the Government Records Council (“Council”) considered the March 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 unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010); Libertarians for Transparent Gov’t v. Borough of Westwood (Bergen), GRC Complaint No. 2016-214 (Interim Order dated October 30, 2018). The Custodian shall locate and retrieve the records from New Jersey Intergovernmental Insurance Fund and provide same to the Complainant. Should no responsive records exist, the Custodian shall certify to same.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver¹ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,² to the Executive Director.³**
3. Because of the limited factual record, this complaint should be referred to the Office of Administrative Law (“OAL”) for a fact-finding hearing to determine the relationship between the Complainant and alleged client African American Data and Research

¹ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

² "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

³ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Institute (“AADARI”) based on the standard set forth in Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517 (App. Div. 2011). See Owoh, Esq. (O.B.O. AADARI) v. Neptune Police Dep’t (Monmouth), GRC Complaint No. 2018-153 (April 2020). Additionally, the OAL should also determine whether AADARI, the organization the Complainant purportedly represents, is legitimate. Should the OAL ultimately find that AADARI is legitimate, and that the Complainant is legally representing them, the OAL shall determine whether the Complainant is a prevailing party and if so, the reasonable fee amount.

Interim Order Rendered by the
Government Records Council
On The 25th 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: April 27, 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)¹
Complainant**

GRC Complaint No. 2021-213

v.

**City of Bayonne (Hudson)²
Custodial Agency**

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

AADARI v. Madeline Medina, et al – HUD-L-4981-19 (App. Div. #A-4218-19 T2) [(“Madeline Medina”)] – For clarification, this is the case that is currently pending in the Appellate Division:

1. Each one of the cancelled checks that were used by the City of Bayonne [(“City”)] to pay for each one of the invoices and services in items [. . .] above.

Custodian of Record: Madeline Medina

Request Received by Custodian: July 6, 2021

Response Made by Custodian: July 7, 2021

GRC Complaint Received: August 30, 2021

Background⁴

Request and Response:

On July 6, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 23, 2021, Jessica Connors responded on the Custodian’s behalf in writing stating the City did not possess responsive records as it did not have a contractual relationship with Inglesino, Webster, Wyciskala & Taylor, LLC (“the Firm”). Ms. Connors stated the City had a contractual relationship with the New Jersey Intergovernmental Insurance Fund (“NJIFF”) which provided the City with indemnification and defense. Ms. Connors stated the Complainant should submit an OPRA request directly with NJIFF since the Firm directly invoiced same.

¹ The Complainant represents the African American Research & Data Institute (“AADARI”).

² Represented by Graham K. Staton, Esq., of Inglesino, Webster, Wyciskala & Taylor, LLC (Parsippany, 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 African American Data & Research Institute) v. City of Bayonne (Hudson), 2021-213 – Findings and Recommendations of the Executive Director

Denial of Access Complaint:

On August 30, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contended the Custodian failed to disclose records responsive to the subject OPRA request. The Complainant asserted the requested cancelled check should have been provided and attached various court orders referencing cancelled checks in separate matters. The Complainant requested the GRC order the Custodian to comply with the OPRA request and to award counsel fees.

Statement of Information:

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. Connors responded on her behalf in writing on July 7, 2021, stating that no responsive records exist.

The Custodian maintained that the requested records did not exist since the City did not issue payments to the Firm. The Custodian argued that if responsive records did not exist or were not in the Custodian’s possession, there was no denial of access. Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 38 (App. Div. 2005). The Custodian asserted Ms. Connors informed the Complainant that he could obtain the records by submitting an OPRA request directly to NJIIF. Further, the Custodian asserted that as an accommodation they provided the Complainant with bill logs and invoices in the Firm’s possession on August 19, 2021.

The Custodian next argued the Complainant was not a prevailing party under the “catalyst” theory of awarding counsel fees. See Mason v. City of Hoboken, 196 N.J. 51, 76 (2008). The Custodian first asserted she timely responded to the Complainant’s OPRA request stating that no responsive records exist and were instead possessed and maintained by NJIIF, therefore fulfilling her obligations as the Custodian.

The Custodian further argued that even if the Complainant was considered a “prevailing party,” he was an attorney representing himself and therefore not entitled to an award of attorney’s fees, citing Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (April 2006). The Custodian asserted that AADARI was a “sham entity” used by the Complainant for “personal gain.” The Custodian referenced Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517-19 (App. Div. 2011), which held that the doctrine of “piercing the corporate veil” applied where an individual was using a corporation as an “alter ego” for personal purposes.

The Custodian requested the GRC take judicial notice of the arguments raised in Owoh, Esq. (O.B.O. AADARI) v. Neptune Police Dep’t (Monmouth), GRC Complaint No. 2018-153 (April 2020), where the custodian argued that AADARI was registered to the Complainant’s home address, and the only registered members of the organization at the time were the Complainant’s family members. The Custodian also asserted that in Neptune the custodian argued that AADARI never earned any income, filed a tax return, or held a bank account according to the Complainant’s personal bankruptcy filings. The Custodian therefore argued that AADARI was the Complainant’s “alter ego” being used for his personal benefit. See Sean Wood, LLC, 422 N.J. Super. at 517.

The Custodian therefore argued that should the Complainant be considered a prevailing party, the matter should be referred to the Office of Administrative Law (“OAL”) for a fact-finding hearing to determine the relationship between the Complainant and the alleged client in accordance with Sean Wood, LLC, 422 N.J. Super. at 517.

Additional Submissions:

On May 16, 2022, the Complainant submitted an e-mail to the GRC. The Complainant argued that the Custodian violated OPRA by failing to provide a complete response to his OPRA request, citing Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010), and Michalak v. Borough of Helmetta, GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012).

The Complainant next argued the burden was on the Custodian to demonstrate that either AADARI or its authorized representative was not a “person” under OPRA. The Complainant contended he has previously won when this issue was raised before the Superior Court. See Simmons v. Mercado, Docket No. CUM-L-712-18, Order (Law Div. Nov. 10, 2020). The Complainant contended that the Custodian’s arguments were “frivolous and bigoted,” and maintained that the GRC find in his favor and award counsel fees.

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 Burnett, the court determined that the defendant was required to obtain settlement agreements from its insurance broker. 415 N.J. Super. at 517. The court’s decision largely fell on the fact that there was no question that the broker was working on behalf of the defendants to execute settlement agreements. Id. at 513. The court noted it previously held that while insurance brokers or outside counsel are third parties, “they nonetheless bind the county as principle, and the agreements are made on its behalf.” Id. In determining that defendants had an obligation to obtain responsive records from the insurance broker, the court noted the facts there differed from those in Bent, 381 N.J. Super. at 38-39⁵ (holding that plaintiff made no showing that the defendant was required to obtain records located outside its agency).

In Libertarians for Transparent Gov’t v. Borough of Westwood (Bergen), GRC Complaint No. 2016-214 (Interim Order dated October 30, 2018), the complainant requested records pertaining to a civil suit. The custodian denied access, stating the suit was handled by the joint insurance fund (“fund”) on the municipality’s behalf and directed the complainant to submit an OPRA request directly. The Council found that while the fund was a public agency, the

⁵ Affirming Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004).
Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. City of Bayonne (Hudson), 2021-213 – Findings and Recommendations of the Executive Director

municipality's relationship with the fund was the same as with private insurers or outside counsel. The Council held that the Custodian therefore had an obligation to obtain the records from the fund in accordance with Burnett.

In the instant matter, the Custodian argued that while the City had a contractual relationship with NJIIF, they had not contractual relationship with the Firm. The Custodian asserted the NJIIF received the Firm's invoices directly, and in turn drafted and issued the checks to the Firm. The Custodian asserted the City was therefore not obligated to retrieve the checks.

However, the relationship between the between the City and NJIIF remains the same as those in Burnett and Libertarians. Specifically, NJIIF issued the checks to the Firm, who was retained for the purposes defending the City in litigation. Thus, the checks were created and issued on behalf of the City as part of NJIIF's obligation to provide the City with services such as legal defense. Similarly, the court in Burnett held that records created by counsel were on behalf of the custodian, notwithstanding that counsel was retained and provided by the custodian's insurer, rather than the custodian directly. 415 N.J. Super. at 513. Thus, the Custodian was obligated to retrieve the checks, notwithstanding whether the City contracted directly with the Firm.

Therefore, the Custodian unlawfully denied access to the Complainant's OPRA request. N.J.S.A. 47:1A-6; Burnett, 415 N.J. Super. at 517; Libertarians, GRC 2016-214. The Custodian shall locate and retrieve the records from NJIIF and provide same to the Complainant. Should no responsive records exist, the Custodian shall certify to same.

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.]

However, the GRC and New Jersey Courts have held differently on this issue where a complainant is representing themselves. According to the New Jersey Supreme Court, the New Jersey Legislature has promulgated a "substantial number of statutes authorizing an award of a reasonable counsel fee *to the attorney for* the prevailing party." (Emphasis added) New Jerseyans For A Death Penalty Moratorium v. N.J. Dep't of Corr. and Devon Brown, 182 N.J. 628 (2005) (decision without a published opinion) (quoting Rendine v. Pantzer, 141 N.J. 292 (1995)). Although the underlying purpose of those statutes may vary, they share a common rationale for incorporating a fee-shifting measure: to ensure "that plaintiffs with bona fide claims are able to find lawyers to represent them[,] . . . to attract competent counsel in cases involving statutory rights, . . . and to ensure justice for all citizens." New Jerseyans (quoting Coleman v. Fiore Bros.,

113 N.J. 594, 598 (1989)). Thus, the courts of the State have determined that the state's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff, not an attorney who is the plaintiff representing himself. See also Feld v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 903 (App. Div. 2019).

OPRA provides that a person who is denied access to a government record may either file a proceeding in Superior Court or file action with the GRC. N.J.S.A. 47:1A-6. In Boggia, GRC 2005-36, the requestor was an attorney requesting records and did not identify that he was representing a client. The Council held that “[b]ased on the fact that the courts of the state have determined that the state's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff *not an attorney who is the plaintiff representing himself*, the Complainant is not entitled to reasonable attorney's fees pursuant to OPRA.” (Emphasis added.) See also Pitts v. N.J. Dep't of Corrections, GRC Complaint No. 2005-71 (April 2006).

Additionally, the Administrative Procedures Act provides that the OAL “shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the [OAL] . . .” N.J.A.C. 1:1-3.2(a).

In Owoh, Esq. (O.B.O. AADARI) v. Freehold Twp. Police Dep't (Monmouth), GRC Complaint No. 2018-155 (Interim Order dated September 29, 2020), the custodian's counsel raised the issue of whether the Complainant was acting on his own behalf or on behalf of AADARI. The Council, pursuant to N.J.A.C. 1:1-15.2(a) and (b), took judicial notice of the issues and arguments raised in Neptune, GRC 2018-153. Id. at 5. In reliance thereof, the Council found there was compelling evidence to warrant a fact-finding hearing to determine whether the Complainant and AADARI were the same entity and referred the matter to the OAL.

Here, the facts in the matter parallel those in Freehold, GRC 2018-155. The Custodian raised the issue of AADARI's legitimacy, contending the Complainant was using AADARI as a façade for personal gain. Further, the Custodian requested the GRC take judicial notice of the issues and arguments raised in Neptune, GRC 2018-153. The Complainant contended the Custodian's arguments were “frivolous and bigoted,” and that this issue was decided in his favor in the Superior Court.

As noted above, this issue has been raised by other parties against the Complainant. However, in neither Neptune nor Freehold was the issue resolved with a complete factual record. In Neptune, the Complainant withdrew the matter the same day the custodian submitted his argumentation. In Freehold, the parties reached a settlement while awaiting review at the OAL. See Owoh, Esq. (O.B.O. AADARI) v. Freehold Twp. Police Dep't (Monmouth), GRC Complaint No. 2018-155 (May 2021). Thus, in a multitude of cases where the Complainant was found to be a prevailing party, the GRC included a footnote indicating the unresolved issue of whether the Complainant represented a bona fide client at the time of the request. See e.g., Owoh, Esq. (O.B.O. AADARI) v. Borough of Kenilworth (Union), GRC Complaint No. 2020-67 (Interim Order dated April 26, 2022); Owoh, Esq. (O.B.O. AADARI) v. Borough of Middlesex (Middlesex), GRC Complaint No. 2018-70 (Interim Order dated August 24, 2021); Owoh, Esq. (O.B.O. AADARI) v. South Brunswick Twp. (Middlesex), GRC Complaint No. 2018-63 (Interim Order dated July 27, 2021). Moreover, the Complainant refers to orders from the Law Division which lack factual

findings to confirm that the arguments raised by the opposing party parallel those raised by the Custodian. Far from “frivolous and bigoted,” the issue raised by the Custodian is a distinct legal question requiring review; the limited factual record contained herein requires additional fact-finding to make a proper determination.

Therefore, because of the limited factual record, this complaint should be referred to the OAL for a fact-finding hearing to determine the relationship between the Complainant and alleged client AADARI based on the standard set forth in Sean Wood, LLC, 422 N.J. Super. at 517. See Neptune, GRC 2018-153. Additionally, the OAL should also determine whether AADARI, the organization the Complainant purportedly represents, is legitimate. Should the OAL ultimately find that AADARI is legitimate, and that the Complainant is legally representing them, the OAL shall determine whether the Complainant is a prevailing party and if so, the reasonable fee amount.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian unlawfully denied access to the Complainant’s OPRA request. N.J.S.A. 47:1A-6; Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 517 (App. Div. 2010); Libertarians for Transparent Gov’t v. Borough of Westwood (Bergen), GRC Complaint No. 2016-214 (Interim Order dated October 30, 2018). The Custodian shall locate and retrieve the records from New Jersey Intergovernmental Insurance Fund and provide same to the Complainant. Should no responsive records exist, the Custodian shall certify to same.
2. **The Custodian shall comply with conclusion No. 1 above within five (5) business days from receipt of the Council’s Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, if applicable. Further, the Custodian shall simultaneously deliver⁶ certified confirmation of compliance, in accordance with N.J. Court Rules, R. 1:4-4,⁷ to the Executive Director.⁸**
3. Because of the limited factual record, this complaint should be referred to the Office of Administrative Law (“OAL”) for a fact-finding hearing to determine the relationship between the Complainant and alleged client African American Data and Research Institute (“AADARI”) based on the standard set forth in Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517 (App. Div. 2011). See Owoh, Esq. (O.B.O. AADARI) v. Neptune Police Dep’t (Monmouth), GRC Complaint No. 2018-153 (April

⁶ The certified confirmation of compliance, including supporting documentation, may be sent overnight mail, regular mail, e-mail, facsimile, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives it by the deadline.

⁷ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁸ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. City of Bayonne (Hudson), 2021-213 – Findings and Recommendations of the Executive Director

2020). Additionally, the OAL should also determine whether AADARI, the organization the Complainant purportedly represents, is legitimate. Should the OAL ultimately find that AADARI is legitimate, and that the Complainant is legally representing them, the OAL shall determine whether the Complainant is a prevailing party and if so, the reasonable fee amount.

Prepared By: Samuel A. Rosado
Staff Attorney

March 21, 2023⁹

⁹ This complaint was prepared for adjudication at the Council's March 28, 2023 meeting, but could not be adjudicated due to lack of quorum.
Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institute) v. City of Bayonne (Hudson), 2021-213 – Findings and Recommendations of the Executive Director