



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

April 30, 2020

RE: Rotimi Owoh, Esq. (o/b/o African American Data and Research Institute) v.
Neptune City Police Department (Monmouth)
GRC Complaint No. 2018-153

To All Parties:

Please find attached the Final Decision of the Government Records Council ("Council") and the Findings & Recommendations of the Executive Director in the above-referenced case(s).

This is the final administrative determination. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Pursuant to New Jersey Court Rule 2:9-7, after filing a notice of appeal from this decision with the Appellate Division, a request for a stay of the decision must be made to the GRC. If the Council denies such request, a motion to stay the Council's decision must be made to the Appellate Division.

Requests for a stay of a final decision must be in writing, delivered to the Council and contemporaneously served upon all parties of the complaint (with a copy of such notice of appeal) pursuant to *N.J.A.C. 5:105-2.12*. Parties must file any objection to a request for a stay within ten (10) business days following receipt of the request. The Executive Director may grant a stay based on consideration of the request and any objection to the request submitted to the Council. A request for a stay must include a detailed analysis of the issues, which must include the requestor's positions with regard to the following factors that the Council will include in its decision-making process:

1. The clear likelihood of success on appeal on the merits of the claim;
2. The danger of irreparable harm if the stay is not granted;
3. The absence of substantial injury to other parties if the stay is granted; and
4. The public interest.

Requests for reconsideration must be completed on the appropriate form, delivered to the Council within ten (10) business days following receipt of a Council decision and contemporaneously served upon all parties of the complaint pursuant to *N.J.A.C. 5:105-2.10*. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council, at its own discretion, may reconsider any decision it renders. The request for reconsideration form is located on the GRC website at www.nj.gov/grc (under "Forms" at the bottom right of the homepage) or may be obtained by contacting the GRC directly at 609-292-6830.

Please contact your assigned Case manager if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank F. Caruso". The signature is written in a cursive style with a large initial "F".

Frank F. Caruso
Executive Director

Enclosures

Parties of the Complaint:

Rotimi Owoh, Esq., Complainant, via Email and Regular Mail

Susan Hewitson, Custodian, via Email and Regular Mail

Jason Sena, Esq., Counsel to Custodian, via Email and Regular Mail



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FINAL DECISION

April 28, 2020 Government Records Council Meeting

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

Complaint No. 2018-153

v.
Neptune City Police Department (Monmouth)
Custodian of Record

At the April 28, 2020 public meeting, the Government Records Council ("Council") considered the April 3, 2020 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 this complaint should be dismissed because the Complainant withdrew same in writing via e-mail on March 12, 2020. Thus, no further adjudication is required.

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 28th Day of April 2020

Robin Berg Tabakin, Esq., Chair
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

A handwritten signature in black ink, appearing to read "Ritardi", with a long, sweeping horizontal stroke extending to the left.

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: April 30, 2020

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Prevailing Party Attorney's Fees
**Supplemental Findings and Recommendations of the Executive Director
April 28, 2020 Council Meeting**

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

GRC Complaint No. 2018-153

v.

**Neptune City Police Department (Monmouth)²
Custodial Agency**

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

1. Copies of Driving While Intoxicated/Driving under the Influence ("DWI/DUI") complaints, summonses, and tickets prepared and filed by the Neptune City Police Department ("NCPD") from January 2016 through present.
2. Drug possession complaints, summonses, and tickets prepared and filed by the NCPD from January 2016 through present.
3. Drug paraphernalia complaints, summonses and tickets prepared and filed by the NCPD from January 2016 through present.

Custodian of Record: Susan Hewitson
Request Received by Custodian: July 24, 2018
Response Made by Custodian: July 24, 2018
GRC Complaint Received: July 30, 2018

Background

February 26, 2020 Council Meeting:

At its February 26, 2020 public meeting, the Council considered the January 21, 2020 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's failure to provide a completed Statement of Information to the GRC, despite more than one request, results in a violation of N.J.A.C. 5:105-2.4(a). Moreover, the Custodian's failure to respond additionally impeded the GRC's efforts

¹ The Complainant represents the African American Research & Data Institute.

² Represented by Mark R. Aikins, Esq., of Mark R. Aikins, LLC. (Wall, NJ).

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

to “receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to a government record by a records custodian . . .” N.J.S.A. 47:1A-7(b).

2. The Custodian unlawfully denied access to the responsive records at issue in this complaint. N.J.S.A. 47:1A-6. Also, the Custodian failed to submit a Statement of Information, which resulted in a violation of the Council’s regulations. N.J.A.C. 5:105-2.4(a). Specifically, the Custodian failed to prove that directing the Complainant to the Neptune City Court was reasonable here. Further, the Neptune City Police Department was ultimately able to locate and disclose records responsive to the subject OPRA request. However, the GRC declines to order any further disclosures because the Complainant received the responsive records on September 10, 2018.
3. The Custodian unlawfully denied access to the requested records. N.J.S.A. 47:1A-6. However, the Custodian ultimately disclosed the responsive records to the Complainant, which he received on September 10, 2018. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions did not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
4. Pursuant to the Custodian’s disclosure after the filing of the instant complaint, 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 (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 (2008). Specifically, the Complainant was able to obtain access to the records at issue as a direct result of this complaint filing. Further, the relief ultimately achieved had a basis in law. 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. 432, and Mason, 196 N.J. 51. **Based on this determination, the parties shall confer in an effort to decide the amount of reasonable attorney’s fees to be paid to Complainant within twenty (20) business days. The parties shall promptly notify the GRC in writing if a fee agreement is reached. If the parties cannot agree on the amount of attorney’s fees, Complainant’s Counsel shall submit a fee application to the Council in accordance with N.J.A.C. 5:105-2.13.**

Procedural History:

On February 28, 2020, the Council distributed its Interim Order to all parties.

On March 12, 2020, Custodian’s Counsel filed a request for reconsideration of the Council’s Interim Order based on a mistake, fraud, new evidence, and illegality. Counsel attached to his reconsideration a legal certification and several exhibits.

Counsel contended that the Council erred in finding that the Complainant was a prevailing party because he was self-representing himself. Counsel averred that New Jersey's courts and the Government Records Council ("GRC") have already held that an attorney representing himself cannot collect fees and costs. Segal v. Lynch, 211 N.J. 230 (2012); Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn, 410 N.J. Super. 510, 545 (App. Div. 2010) (certify. denied, 203 N.J. 93 (2010)); Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (Interim Order dated October 28, 2005).

Counsel initially argued that the African American Data and Research Institute ("AADARI") did not exist "as a matter of law" at the time of the subject OPRA request. Counsel contended that only a corporation licensed to do business in the state has the ability "to sue and be sued, complain and defend and participate as a party or otherwise in any judicial, administrative, arbitative or other proceeding, in its corporate name." N.J.S.A. 14A:3-1(b). Counsel argued that because AADARI did not exist at the time, the Complainant should be deemed the actual requestor. Counsel noted that AADARI did eventually receive a Certificate of Formation on October 17, 2018, months after the filing of this complaint. See Sena Cert. Exhibit A. Counsel contended that Neptune City ("City") previously advised the GRC of this fact, but it nonetheless held that the Complainant was a prevailing party.⁴

Counsel next argued that AADARI was "a sham entity that [the Complainant] has admitted in multiple court filings that he created for himself for his own purposes." Counsel averred that the courts have previously disregarded a business entity when it was "being used as an alter ego of an individual seeking to obtain an improper advantage." See Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517 (App. Div. 2011). Counsel argued that here, AADARI is registered to the Complainant's home address. Sena Cert. Exhibits B and C. Counsel further argued that both registered members of AADARI, the Complainant's mother and son, have the same address. Sena Cert. Exhibits F and G. Counsel further averred that according to the Complainant's own bankruptcy filings, neither is employed or receives "any payments from any source." Sena Cert. Exhibit D and F. Counsel thus contended that it was highly unlikely that either individual managed or operated AADARI in any capacity.

Counsel further contended that the Complainant's own bankruptcy filing supports the conclusion that AADARI is the Complainant's "alter-ego." Counsel noted that therein, the Complainant admitted that AADARI never earned any income, filed tax return, or had a bank account. Counsel stated that instead, the Complainant described AADARI as ". . . a legal entity created and used by the undersigned . . . to gain access, research, compare and analyze government records . . ." Sena Cert. Exhibit G. Counsel contends that this admission proves that AADARI is a "straw company being utilized by [the Complainant] for his personal benefit." Counsel noted that the Complainant has filed in excess of twenty (20) lawsuits against other municipalities under AADARI with some likely initiated prior to AADARI's existence. Counsel argued that because the Complainant knew he could not alone recover fees under OPRA, he "created a fictional company to advance his personal interests . . ."

⁴ The City's Business Administrator sent an e-mail to the GRC on January 31, 2020 asserting "if [AADARI] did not exist until August than(sic) he is trying to recover his own attorney's fees . . ."

Rotimi Owoh, Esq. (On Behalf of African American Data & Research Institution) v. Neptune City Police Department (Monmouth). 2018- 3
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Counsel thus argued that in the face of ample evidence supporting that the Complainant and AADARI were one and the same, he should not be considered a prevailing party. Counsel further argued that the Council should “prevent an injustice of requiring a public entity that relies upon the tax-payer dollars to pay any fees or costs where it is not permitted or warranted.” Counsel also argued that because AADARI did not incur any costs or obligation to pay fees associated with this litigation, no prevailing party fees should be awarded here.

On the same day, the Complainant withdrew his complaint on the basis that AADARI received the responsive records and “not much time was spent on the case.”

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint should be dismissed because the Complainant withdrew same in writing via e-mail on March 12, 2020. Thus, no further adjudication is required.

Prepared By: Frank F. Caruso
Executive Director

April 3, 2020