



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**November 19, 2013 Government Records Council Meeting**

Gary Karakashian  
Complainant

Complaint Nos. 2013-121 and  
2013-144

v.

NJ Department of Law & Public Safety,  
Division of Consumer Affairs, Office Board of  
Medical Examiners  
Custodian of Record

At the November 19, 2013 public meeting, the Government Records Council (“Council”) considered the November 12, 2013 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 the Custodian attempted to reasonably accommodate the Complainant’s voluminous requests and subsequently certified that responding to the requests would have substantially disrupted agency operations. Additionally, it is evident that the parties could not reach a reasonable accommodation. Therefore, the Custodian did not unlawfully deny access to the Complainant’s OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-6; Caggiano v. NJ Dep’t of Law & Public Safety, Div. of Consumer Affairs, GRC Complaint No. 2007-69 (September 2007); Vessio v. NJ Dep’t of Cmty. Affairs, Div. of Fire Safety, GRC Complaint No. 2007-63 (May 2007); Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2008-13 (June 2009). See also Davis v. NJ Dep’t of Health & Senior Services, GRC Complaint Nos. 2012-94 and 2012-142 (May 2013).

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 19<sup>th</sup> Day of November, 2013

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: November 21, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 19, 2013 Council Meeting**

**Gary Karakashian<sup>1</sup>  
Complainant**

**GRC Complaint Nos. 2013-121 and 2013-144<sup>2</sup>**

v.

**New Jersey Department of Law & Public Safety,  
Division of Consumer Affairs, Office Board of Medical Examiners<sup>3</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

April 15, 2013 OPRA requests: Electronic copies via e-mail of:

1. All administrative complaints filed with the New Jersey Board of Medical Examiners (“BME”) from 1998 to 2003 and the resolution of the complaints, whether the decision resulted from administrative hearings, settlements, or withdraws and including any penalties imposed. Please include any publically available records pertaining to the complaints, such as the initiating letter to the Attorney General’s (“AG”) office or the BME.
2. All administrative complaints filed with the BME from 2004 to 2009 and the resolution of the complaints, whether the decision resulted from administrative hearings, settlements, or withdraws and including any penalties imposed. Please include any publically available records pertaining to the complaints, such as the initiating letter to the AG’s office or the BME.
3. All administrative complaints filed with the BME from 2009 to 2013 and the resolution of the complaints, whether the decision resulted from administrative hearings, settlements, or withdraws and including any penalties imposed. Please include any publically available records pertaining to the complaints, such as the initiating letter to the AG’s office or the BME.
4. Names of all employees of the BME, title, position, dates of employment, reason for separation if not currently employed for the period 1998 through 2013.

April 29, 2013 OPRA request: Electronic copies via e-mail of administrative complaints filed against the following nineteen (19) physicians – Hector Castillo, Steven Hodes, Gerald Scott, Don Henry Wijaya, Richard Kaul, Leslie Shrem, Alinoard Salantash, Chandrakant Patel, Michael Ashkar, Jerome Carolino, Armand Grasso, Jose Lopez, Ming Chang, Zenon Matkivsky, John Napoleon, Michael Katz, Michael Sumner, Fadi Bejjani and Edward Andujar.

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

<sup>2</sup> The GRC has consolidated these complaints for adjudication because of the commonality of the parties and issues.

<sup>3</sup> Represented by Deputy Attorney General Steven Flanzman.

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May 1, 2013 OPRA requests: Electronic copies via e-mail of:

1. Administrative complaints filed against the following fifteen (15) physicians – Paul McGhee, Kenneth Zahl, David Baird, Irwin Gerson (or Gerson), Radu Codel, Frederick Coville, Hitesh Patel, William Hasburn, Leonard Joachim, Philip Getson, Juan DelaCruz Nova, Lee Eisenberg, Ashwin (sic) Nee gland, Alan Wasserman, and Bowen Chi Tzeng.
2. Administrative complaints filed against the following fifteen (15) physicians – John Ricci, Mr. Castillo, Roy Levinson, Farouk al-Salihi, Mr. Kaul, Ulises (sic) Sabato, Ms. Shrem, Mr. Bejjani, Zahid Hussain, George Dendrinis, Albert Poet, Shiva Kotturi, Santusht Perera, Chong Park and Allen Lazar.

May 3, 2013 OPRA requests: Electronic copies via e-mail of:

1. Administrative complaints filed against the following nine (9) physicians – Ray Bello, Chowdhury Azam, Beverly Friedlander, Gangaram Ragi, Perdro Margate, Germeet Multani, Dione Williams and Vladimir Berkovich.
2. Administrative complaints filed against the following fifteen (15) physicians – Ahmad Mossavi, Parvez Dara, Douglas Bradley, Shar (sic) Qureshi, Paul Ratzker, Denis Schisano, Frank Machiaverna, Mr. Zahl, Donald Frank, David Weiss, Mr. Park, Sri Kantha, Sanjay Kavantham George Godfrey and Surendra Sheth.

May 6, 2013 OPRA request: Electronic copies via e-mail of:

1. All publically available information regarding disciplinary actions taken against Joan Lieser including a copy of the consent order, administrative complaint and transcript.
2. Administrative complaints filed against the following four (4) physicians – Steven Brownstein, Beatrice Onyeador, Mildred Sabo and Pricilla Ilem.

**Custodian of Record:** Robert J. Campanelli

**Request Received by Custodian:** April 15, 2013; April 29, 2013; May 1, 2013; May 3, 2013 and May 6, 2013.

**Response Made by Custodian:** April 19, 2013; April 22, 2013; April 24, 2013; April 26, 2013; May 7, 2013; May 8, 2013 and May 10, 2013.

**GRC Complaint Received:** April 26, 2013 and May 15, 2013

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

Request and Response:

GRC Complaint No. 2013-121:

On April 15, 2013, the Complainant submitted four (4) Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On April 19, 2013,

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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.

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the Custodian responded in writing requesting a conference call on April 22, 2013. The Complainant asked for the topic of the conference. On April 22, 2013, the Custodian advised that the Complainant's requests were overly broad and he would like to discuss narrowing same. The Complainant disputed that the requests were overly broad and noted that all decisions are public records. On April 24, 2013, the Custodian advised that he could not provide all information requested, but could provide a spreadsheet listing physicians' names, disposition, date, disciplinary action, costs and penalties. The Custodian noted that there is no way to track administrative complaints because the BME does not maintain such a list and must compile the information by doing a complete search of its records. The Custodian further states that he can provide a current employee list with date of employment that also needs to be compiled. The Custodian states that pending an agreement of these accommodations, the Custodian needs fifteen (15) business days to respond.

On April 24, 2013, the Complainant responded stating that he will accept the spreadsheet so long as the responsive complaints accompany the spreadsheet. The Complainant further questions why the BME has no record of complaints filed by the AG's office. The Complainant advises that he will limit his request for employee information to the time frame of 1998 to 2005. On April 25, 2013, the Complainant advised that the Custodian did not respond to his proposals. On April 26, 2013, the Custodian denied access to the requests as invalid and because the parties could not reach a reasonable accommodation.

#### GRC Complaint 2013-144:

On April 29, 2013, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records. On May 1, 2013, the Complainant submitted two (2) OPRA requests to the Custodian seeking the above-mentioned records. On May 3, 2013, the Complainant submitted two (2) OPRA requests to the Custodian seeking the above-mentioned records. On May 6, 2013, the Complainant submitted an OPRA request to the Custodian seeking the above-mentioned records.

On May 7, 2013, the Custodian responded in writing advising that due to the number of requests, as well as their breadth, it is possible that fulfilling same could disrupt agency operations and thus a special service charge could be warranted. The Custodian further requested that the Complainant advise whether he intended to submit any additional requests for similar records. The Custodian noted that each file would take between 35 and 75 minutes to review, there would be a charge of approximately \$2.50 per box retrieved from storage and the BME would need in excess of 20 business days to fulfill same. The Custodian requested that the Complainant respond addressing the Custodian's concerns. The Complainant responded noting that he submitted these requests as a response to the Custodian's denial of his April 15, 2013 requests. The Complainant further disputed the imposition of a special service charge.

On May 8, 2013, the Custodian responded noting that OPRA allows custodians to charge a special service charge for requests needing an "... extraordinary expenditure of time and effort ..." N.J.S.A. 47:1A-5(c). The Custodian stated that the BME has no extra space in its office and must archive most records. The Custodian stated that the BME must pay \$2.00 per box for retrieval and that the cost will be passed onto the Complainant. The Custodian stated that at 35 to

75 minutes for close to 50 names, the cost to provide records is between \$1,000.00 and \$1,500.00, excluding copy costs. The Custodian requested that the Complainant advise whether he accepts the charges and 20-business day extension of time. The Complainant responded contending that the BME's storage situation is not his concern and no cost should be passed to him. The Complainant further contended that he sought electronic copies of records, thus, no copy cost should apply. The Complainant stated that he has no other choice but to file a complaint with the GRC for the Custodian's failure to provide records.

On May 10, 2013, the Custodian responded denying access to the Complainant's OPRA requests for failure to reach a reasonable accommodation.

#### Denial of Access Complaint:

On April 26, and May 15, 2013, the Complainant filed a Denial of Access Complaint Nos. 2013-121 and 2013-144, respectively, with the Government Records Council ("GRC").

The Complainant contends that after some back and forth communications regarding the April 15, 2013 OPRA requests, the Custodian failed to respond to the Complainant's April 24, 2013 e-mail. The Complainant provided no additional arguments regarding the additional six (6) OPRA requests.

#### Statement of Information:

On August 23, 2013, the Custodian filed Statements of Information ("SOI") for both complaints.<sup>5</sup> The Custodian contends that the Complainant filed two (2) complaints involving ten (10) OPRA requests that should be considered jointly given their similarities.

#### GRC Complaint No. 2013-121

The Custodian certifies that he received the Complainant's April 15, 2013 OPRA requests on April 15, 2013. The Custodian contends that because he believed the three (3) requests seeking all complaints and documents related thereto for over a 15-year period (1998-2013) was overly broad. The Custodian contends that the information responsive to the fourth (4<sup>th</sup>) request seeking personnel information for the same time period was not readily retrievable from any record or database. The Custodian certifies that for these reasons, the Custodian attempted to reach a reasonable solution by offering an alternative proposal that the Complainant turned down. The Custodian notes that the Complainant amended his fourth (4<sup>th</sup>) request to seek personnel information from 1998 to 2005.

The Custodian argues that although the Complainant filed the three (3) requests for all administrative complaints and documents, the Custodian properly consolidated same. The Custodian contends that in their totality, the breadth of records sought in these requests was staggering. The Custodian certifies that the Complainant essentially sought every document related to every complaint filed with the BME for over a 15-year period; the requests would

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<sup>5</sup> On May 31, 2013, these complaints were referred to mediation. On June 28, 2013, these complaints were referred back to the GRC for adjudication.

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cause a substantial disruption of agency operations and are invalid. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). The Custodian further argues that not only were these requests overly broad, but they would have required research of every file to determine if disciplinary actions occurred following the filing of the complaints. Burnett v. Cnty. Of Gloucester, 415 N.J. Super. 506, 515 (App. Div. 2010); Bart v. Passaic Cnty. Of Public Hous. Auth., 406 N.J. Super. 445, 452 (App. Div. 2009). The Custodian asserts that his actions were consistent with a custodian's obligation to attempt to reach a reasonable solution. N.J.S.A. 47:1A-5(g).

The Custodian asserts that the Complainant's fourth (4<sup>th</sup>) request seeking personnel information was an invalid request that failed to identify government records.

#### GRC Complaint No. 2013-144

The Custodian certifies that he received the Complainant's first (1<sup>st</sup>) OPRA request on April 29, 2013. The Custodian certifies that he received the Complainant's second (2<sup>nd</sup>) and third (3<sup>rd</sup>) OPRA requests on May 1, 2013. The Custodian certifies that he received the Complainant's fourth (4<sup>th</sup>) and fifth (5<sup>th</sup>) OPRA requests on April 26, 2013. The Custodian certifies that he received the Complainant's sixth (6<sup>th</sup>) OPRA request on May 6, 2013. The Custodian certifies that these requests sought a subset of records the Complainant sought in his April 15, 2013 OPRA requests; the scope of these requests was narrowed to 77 individual physicians. The Custodian certifies that because he was worried that the Complainant would submit additional requests in this manner to avoid a denial similar to the one in GRC 2013-121, the Custodian contacted the Complainant and asked if he planned to submit additional requests. The Custodian certifies that he also advised that the aggregate total of records requested could substantially disrupt agency operations, but that a special service charge is certainly warranted. The Custodian certifies that after attempts to reach an agreement failed, he denied access to the Complainant's requests.

The Custodian argues that his denial of access to the six (6) OPRA requests received over eight (8) days seeking copies of administrative complaints against over 70 physicians was proper. The Custodian asserts that he had no way of knowing whether the Complainant would continue to submit piecemeal requests, but was clearly concerned that the Complainant was attempting to circumvent the Custodian's previous denial. The Custodian asserts that he attempted to reach an agreement with the Complainant on the imposition of a special service charge of between \$1,000.00 and \$1,500.00 and an extension of time to respond; however, the Complainant refused to consent. The Custodian contends that the estimated special service charge was reasonable given the voluminous nature of the requests and because many of the files had to be retrieved from storage and reviewed to locate responsive records. N.J.S.A. 47:1A-5(c); Courier Post v. Lenape Reg'l. High Sch., 360 N.J. Super. 191 (Law Div. 2002). The Custodian further contends that his denial of access to the requests was reasonable, if not dictated by the Complainant's refusal to agree to the special service charge and extension of time to produce the responsive records.

## Analysis<sup>6</sup>

### 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.

OPRA provides that “[i]f a request for access to a government record would substantially disrupt agency operations, the custodian may deny access to the record after attempting to reach a reasonable solution with the requestor that accommodates the interests of the requestor and the agency.” N.J.S.A. 47:1A-5(g).

Regarding voluminous records requests, in Vessio v. NJ Dep’t of Cmty. Affairs, Div. of Fire Safety, GRC Complaint No. 2007-63 (May 2007), the custodian certified in the SOI that granting access to all fire safety inspection files from 1986 to 2006 would result in a substantial disruption to the agency’s operations. The Council held that the custodian’s denial of access was authorized by N.J.S.A. 47:1A-5(g) based on his efforts to reach a “reasonable solution” with the complainant and the voluminous nature of the complainant’s request.

In Caggiano v. NJ Dep’t of Law & Public Safety, Div. of Consumer Affairs, GRC Complaint No. 2007-69 (September 2007), the complainant sought inspection of multiple records totaling 745 pages. The custodian responded granting inspection of the responsive records noting that the complainant would be required to pay the per hour rate of the employee supervising the inspection for every hour over 2 hours. The complainant filed a complaint with the GRC contending that he should not have to pay any cost for inspection. In a July 16, 2007 letter, the custodian contended that an extended inspection of the responsive records would cause a substantial disruption to agency operations. The Council agreed, determining that the “... Custodian has borne her burden of proving that the denial of access was authorized by law ...” because “the extended records inspection ... would substantially disrupt the agency’s operations, and because the Custodian made numerous attempts to reasonably accommodate the Complainant’s request ...” Id. at pg. 9.

In Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2008-13 (June 2009), the complainant submitted a fifty (50) page OPRA request to the custodian on December 3, 2007. The custodian responded in writing in a timely manner noting that the complainant’s OPRA request was voluminous and fulfilling it would substantially disrupt the agency’s operations. The custodian further stated in the SOI that as an attempt to accommodate the complainant’s OPRA request, the custodian asked the complainant to narrow his request or provide an alternative suggestion for resolving the matter. However, the complainant’s responses were vague and failed to narrow the scope of his request to a more manageable scale. The GRC determined that:

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<sup>6</sup> There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

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[B]ecause in the Custodian's timely response to the Complainant's OPRA request, the Custodian attempted to reach a reasonable accommodation of the OPRA request with the Complainant regarding the Complainant's voluminous request which would substantially disrupt the agency's operations, and because once it became evident that the parties could not reach an accommodation, the Custodian informed the Complainant that he would have to deny the Complainant's OPRA request, the Custodian has not unlawfully denied the Complainant access to the records requested pursuant to N.J.S.A. 47:1A-5(g), [NJ Builders, 390 N.J. Super. at 180], [Vessio, GRC 2007-63] and Caggiano v. Borough of Stanhope, GRC Complaint No. 2006-220 (September 2007).

Id. at 8.

Here, the Complainant's four (4) April 15, 2013 OPRA requests submitted to the BME seek countless records within a 15-year time period. In the early response stages, the Custodian attempted to schedule a meeting to narrow the requests and subsequently attempted to offer the Complainant a spreadsheet of complaints and current employee information. The Custodian noted that these records would need to be compiled and that additional time would be necessary to respond. The Complainant effectively rejected this offer and narrowed his employee information request to a time period of 1998 to 2005. The Custodian responded denying the requests for failure to reach a reasonable accommodation.

Similarly, the Complainant's six (6) OPRA requests submitted over an eight (8) business day period seek records for 77 physicians with no set time frame. Early on, the Custodian stated that a special service charge and extension of time would be necessary because of the breadth of the requests. The Complainant rejected this option and the Custodian in turn denied the requests for failure to reach a reasonable accommodation.

In the SOIs, the Custodian certified that at the onset of the requests, he had reasonable grounds to deny same as invalid because they were overly broad, sought information and would disrupt agency operations. However, the Custodian certified that he attempted to accommodate the requests by proposing accommodations to the Complainant that were rejected. The Custodian further asserted that his actions were consistent with relevant OPRA provisions and past case law. N.J.S.A. 47:1A-5(g); MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. 30, 37; NJ Builders, 390 N.J. Super. at 180; Burnett, 415 N.J. Super. at 515; Bart, 406 N.J. Super. at 452; N.J.S.A. 47:1A-5(c); Courier Post, 360 N.J. Super. at 191.

The facts of this complaint are similar to those in Vessio, and Dittrich, in that the Complainant's requests sought general records over a significant or undefined time frame and the Custodian attempted to get the Complainant to narrow his April 15, 2013, requests. The facts are also similar to Caggiano, in that the Complainant rejected a special service charge associated with the six (6) additional requests arguing that he was not required to pay costs associated with disclosure of the records. The GRC is satisfied that the Custodian reasonably attempted to accommodate the Complainant's requests before denying access to same as invalid and the GRC is further satisfied with the Custodian's SOI certification that fulfilling the requests would have caused a substantial disruption to agency operations.

Therefore, the Custodian attempted to reasonably accommodate the Complainant's voluminous requests and subsequently certified that responding to the requests would have substantially disrupted agency operations. Additionally, it is evident that the parties could not reach a reasonable accommodation. Therefore, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-6; Vessio, GRC 2007-63; Caggiano, GRC 2007-69; Dittrich, GRC 2008-13. See also Davis v. NJ Dep't of Health & Senior Services, GRC Complaint Nos. 2012-94 and 2012-142 (May 2013).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian attempted to reasonably accommodate the Complainant's voluminous requests and subsequently certified that responding to the requests would have substantially disrupted agency operations. Additionally, it is evident that the parties could not reach a reasonable accommodation. Therefore, the Custodian did not unlawfully deny access to the Complainant's OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-6; Caggiano v. NJ Dep't of Law & Public Safety, Div. of Consumer Affairs, GRC Complaint No. 2007-69 (September 2007); Vessio v. NJ Dep't of Cmty. Affairs, Div. of Fire Safety, GRC Complaint No. 2007-63 (May 2007); Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2008-13 (June 2009). See also Davis v. NJ Dep't of Health & Senior Services, GRC Complaint Nos. 2012-94 and 2012-142 (May 2013):

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Brandon D. Minde, Esq.  
Executive Director

November 12, 2013