



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET  
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TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**September 24, 2013 Government Records Council Meeting**

Kevin Richards  
Complainant

Complaint No. 2013-41

v.

Bergen County Prosecutor's Office  
Custodian of Record

At the September 24, 2103 public meeting, the Government Records Council ("Council") considered the September 17, 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 lawfully denied access to any responsive records because the records relate to a criminal investigation and are thus exempt as criminal investigatory records. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Janeczko v. NJ Dep't of Law & Public Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Johnson v. NJ Div. of State Police, GRC Complaint No. 2004-46 (June 2004). *See also* Solloway v. Bergen County Prosecutor's Office, GRC Complaint No. 2011-39 (January 2013); Hwang v. Bergen County Prosecutor's Office, GRC Complaint No. 2011-348 (January 2013). The Council need not address the Custodian's additional arguments as the responsive records are deemed to be exempt from disclosure.

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 24th Day of September, 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: September 26, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 24, 2013 Council Meeting**

**Kevin Richards<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-41**

**v.**

**Bergen County Prosecutor's Office<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hardcopies via U.S. mail of 1996 "Statement of Tamara Brown" and "interview Report of Tamara Brown" in State v. Kevin Richards, et al., Indictment No. S-302-97, Docket No. 908-96.

**Custodian of Record:** Frank Puccio, Esq.

**Request Received by Custodian:** January 7, 2013

**Response Made by Custodian:** January 14, 2013

**GRC Complaint Received:** January 28, 2013

**Background<sup>3</sup>**

**Request and Response:**

On January 2, 2013, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On January 14, 2013, the Custodian responded in writing stating that he located the responsive statement (46 pages) and that same is exempt from disclosure as a criminal investigatory record. N.J.S.A. 47:1A-1.1; Janeczko v. NJ Dep't of Law & Public Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Johnson v. NJ Div. of State Police, GRC Complaint No. 2004-46 (June 2004). The Custodian further states that he did not locate an interview report and reasonably believes no record exists. However, the Custodian notes that the file is extensive and that police reports are not always captioned by subject, thus there may be records that discuss the interview. The Custodian states that attempting to locate any records would substantially disrupt agency operations but that the Bergen County Prosecutor's Office ("BCPO") would, as an alternative, hire an outside agency to locate responsive records. The Custodian states that notwithstanding this option, it is likely that any responsive records would be exempt as criminal investigatory records.

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

<sup>2</sup> Represented by John Carbone, Esq. (North Haledon, NJ).

<sup>3</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.

### Denial of Access Complaint:

On January 28, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”) disputing the Custodian’s denial of access to his OPRA requests. The Complainant asserts that based on a number of factors, he does not possess many of the discovery records relating to his indictment and is requesting that access be granted to those in the relevant OPRA request.

### Statement of Information:

On March 27, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that the OPRA request seeks records pertaining to State v. Kevin Richards, et al., Indictment No. S-302-97, Docket No. 908-96, a case in which three defendants were indicted for a 1996 homicide of a security guard. The Custodian certifies that the Complainant is currently engaged in various stages of appeal and/or post-conviction relief proceedings. On November 25, 2012, the Custodian examined the case file consisting of three (3) 16 inch by 24 inch boxes, six (6) 11 inch by 18 inch boxes and additional small folders containing tens of thousands, if not hundreds of thousands, of records. The Custodian certifies that the file contained normal investigative and prosecution records, as well as appeals records from all defendants. The Custodian certifies that the Complainant’s own description of the responsive records clearly indicates that the reports are exempt from disclosure as criminal investigatory records.

The Custodian certifies that the “statement of Tamara Brown” consists of 46 pages and is exempt as a criminal investigatory record. N.J.S.A. 47:1A-1.1; Janeczko, supra; Johnson, supra. The Custodian certifies that although the criminal investigation may be completed, the exemption still applies. *See* Solloway v. Bergen County Prosecutor’s Office, GRC Complaint No. 2011-39 (January 2013); Hwang v. Bergen County Prosecutor’s Office, GRC Complaint No. 2011-348 (January 2013). The Custodian further certifies that no report captioned “interview report of Tamara Brown” was located in the file. The Custodian certifies that the only way to determine whether the record existed was to review voluminous records in order to identify a responsive record. The Custodian certifies that this process would have taken more than the five (5) business day time frame to submit the SOI. The Custodian certifies that for this reason, he provided the SOI without verifying that the BCPO possesses the records at issue.

The Custodian further argues that the Complainant’s requests would force the Custodian to research his files to locate the responsive records, which is not required under OPRA. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). The Custodian also argues that simply searching for the records would cause a substantial disruption of agency operations. N.J.S.A. 47:1A-5(g). The Custodian asserts that alternatively, the BCPO could seek a third-party vendor to review the file and pass the cost to the Complainant. N.J.S.A. 47:1A-5(d).

## Analysis<sup>4</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 further provides that “[a] government record shall not include the following information which is deemed to be confidential ... criminal investigatory records ...” N.J.S.A. 47:1A-1.1.

Here, the Complainant sought records relating to a homicide investigation that led to the indictment of three (3) defendants. The GRC is satisfied that, as indicated by the Custodian, the responsive records, if any, directly relate to a criminal investigation and are thus exempt under OPRA.

Therefore, the Custodian lawfully denied access to any responsive records because the records relate to a criminal investigation and are thus exempt as criminal investigatory records. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Janeczko, supra; Johnson, supra. See also Solloway, supra; Hwang, supra. The Council need not address the Custodian’s additional arguments as the responsive records are deemed to be exempt from disclosure.

### Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to any responsive records because the records relate to a criminal investigation and are thus exempt as criminal investigatory records. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Janeczko v. NJ Dep’t of Law & Public Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Johnson v. NJ Div. of State Police, GRC Complaint No. 2004-46 (June 2004). See also Solloway v. Bergen County Prosecutor’s Office, GRC Complaint No. 2011-39 (January 2013); Hwang v. Bergen County Prosecutor’s Office, GRC Complaint No. 2011-348 (January 2013). The Council need not address the Custodian’s additional arguments as the responsive records are deemed to be exempt from disclosure.

Prepared By: Frank F. Caruso  
Senior Case Manager

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

September 17, 2013

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<sup>4</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.