



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

January 30, 2015 Government Records Council Meeting

Robert Kovacs  
Complainant

Complaint No. 2014-196

v.

Irvington Police Department (Essex)  
Custodian of Record

At the January 30, 2015 public meeting, the Government Records Council (“Council”) considered the January 20, 2015 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The GRC attempted several times to obtain a completed SOI from the Custodian. Moreover, the GRC received a reply from the Custodian’s former counsel, and granted his request for additional time to submit the SOI. The Custodian’s failure to provide a completed SOI to the GRC results in a violation of N.J.A.C. 5:105-2.4(a).
2. The requested record is a police incident report and meets the criteria for a criminal investigatory record. Accordingly, it is not a government record as defined under OPRA and not subject to public access. Thus, the Custodian did not unlawfully deny access to said record. N.J.S.A. 47:1A-1.1. See Nance v. Scotch Plains Police Dep’t, GRC Complaint No. 2003-125 (January 2005). See also Rivera v. Passaic Cnty. Sheriff’s Office, GRC Complaint No. 2010-152 (May 2011); Connelly v. Twp. of Montville (Morris), GRC Complaint No. 2013-59 (September 2013).
3. The Custodian did not unlawfully deny access to the Complainant’s request for arrest records, as the request failed to contain reasonable identifiers to locate a responsive document. Goodman v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2010-323 (April 2012). See also MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

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 30<sup>th</sup> Day of January, 2015

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: February 4, 2015**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 30, 2015 Council Meeting**

**Robert Kovacs<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-196**

v.

**Irvington Police Department (Essex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** “One copy of each arrest report and incident report containing the name “Cheryl Pizzichillo,” also known as “Cheryl Pizzichello.”

**Custodian of Records:** Chief Michael Chase

**Request Received by Custodian:** January 9, 2014; February 15, 2014

**Response Made by Custodian:** N/A

**GRC Complaint Received:** May 16, 2014

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

**Request and Response:**

On January 9, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-mentioned records. After receiving no response from the Custodian, the Complainant submitted the OPRA request again on February 15, 2014. To date, there has been no response from the Custodian.

**Denial of Access Complaint:**

On May 16, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant stated that the Custodian has not responded to either OPRA requests, and believes the Irvington Police Department (“IPD”) is prejudiced against him because he is an out of state prison inmate.

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

<sup>2</sup> Represented by Evelyn Akushie-Onyeani, Esq (Irvington, 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.

### Statement of Information:

On June 6, 2014, the GRC requested a completed Statement of Information (“SOI”) from the Custodian. After failing to respond within the provided five (5) business days, on June 16, 2014, the GRC sent a “No Defense” letter to the Custodian requesting a completed SOI within three (3) business days of receipt. On June 18, 2014, then-Counsel for the Custodian, Evans Anyanwu, Esq., responded to the GRC in writing, seeking an extension of time to submit an SOI to June 27, 2014. The GRC replied that day, granting the Custodian’s request and advising that no further extensions would be granted. To date, the GRC has not received a response from the Custodian.

### 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.

#### Failure to Submit SOI

OPRA also provides that “Custodians shall submit a completed and signed statement of information (SOI) form to the Council and the complainant simultaneously that details the custodians' position for each complaint filed with the Council[.]” N.J.A.C. 5:105-2.4(a).

OPRA further provides that:

Custodians shall submit a completed and signed SOI for each complaint to the Council's staff and the complainant not later than five business days from the date of receipt of the SOI form from the Council's staff . . . Failure to comply with this time period may result in the complaint being adjudicated based solely on the submissions of the complainant.

N.J.A.C. 5:105-2.4(f).

Finally, OPRA provides that “[a] custodian’s failure to submit a completed and signed SOI . . . may result in the Council’s issuing a decision in favor of the complainant.” N.J.A.C. 5:105-2.4(g). In Alterman, Esq. v. Sussex Cnty. Sheriff’s Office, GRC Complaint No. 2013-353 (September 2014), the custodian failed to provide a completed SOI to the GRC within the allotted deadline. Thus the Council noted the custodian’s failure to adhere to N.J.A.C. 5:105-2.4(a).

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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.

Here, the GRC attempted several times to obtain a completed SOI from the Custodian. Moreover, the GRC received a reply from the Custodian's former counsel, and granted his request for additional time to submit the SOI. The Custodian's failure to provide a completed SOI to the GRC results in a violation of N.J.A.C. 5:105-2.4(a).

### Incident Reports

Criminal investigatory records are exempt from disclosure. N.J.S.A. 47:1A-1.1. A criminal investigatory record is defined as "a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding[.]" Id.

Here, the Complainant sought, in part, any "incident report" of a named individual from the IPD. The Council has long held that police incident reports are criminal investigatory records. *See* Nance v. Scotch Plains Police Dep't, GRC Complaint No. 2003-125 (January 2005). *See also* Rivera v. Passaic Cnty. Sheriff's Office, GRC Complaint No. 2010-152 (May 2011); Connelly v. Twp. of Montville (Morris), GRC Complaint No. 2013-59 (September 2013).

The requested record is a police incident report and meets the criteria for a criminal investigatory record. Accordingly, it is not a government record as defined under OPRA and not subject to public access. Thus, the Custodian did not unlawfully deny access to said record. N.J.S.A. 47:1A-1.1. *See* Nance, GRC No. 2003-125; Rivera, GRC No. 2010-152; Connelly, GRC No. 2013-59.

### Arrest Reports

The GRC has long held that arrest reports are subject to disclosure under OPRA. *See* Nance, GRC No. 2003-125. *See also* Barkley v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2012-34 (Interim Order dated April 30, 2013). In Barkley, the Council determined that the because "arrest reports typically contain the arrestee's (defendant's) name, age, residence, occupation, marital status, time and place of arrest, text of the charges, arresting agency, identity of the arresting personnel, amount of bail and whether it was posted," they are government records subject to disclosure. Id. (*citing* N.J.S.A. 47:1A-3(b), Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156, and Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (Interim Order dated February 27, 2008)).

However, in Goodman v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2010-323 (April 2012), the Council addressed requests for arrest reports which lacked reasonable identifiers to locate a responsive record. The Council determined that a request seeking arrest reports for two (2) individuals was invalid because the complainant failed "to provide [a] range of dates . . . [a]bsent date ranges, the . . . request . . . is an overly broad and invalid blanket request." Id. at 5-6.

Here, the Complainant sought "each arrest report . . . containing the name 'Cheryl Pizzichillo,' also known as 'Cheryl Pizzichello.'" Similar to the request in Goodman, the

Complainant's failed to provide any identifiers beyond the name of the individual involved in the arrest report(s). GRC No. 2010-323.

Therefore, the Custodian did not unlawfully deny access to the Complainant's request for arrest records, as the request failed to contain reasonable identifiers to locate a responsive document. Goodman, GRC No. 2010-323. *See also* MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The GRC attempted several times to obtain a completed SOI from the Custodian. Moreover, the GRC received a reply from the Custodian's former counsel, and granted his request for additional time to submit the SOI. The Custodian's failure to provide a completed SOI to the GRC results in a violation of N.J.A.C. 5:105-2.4(a).
2. The requested record is a police incident report and meets the criteria for a criminal investigatory record. Accordingly, it is not a government record as defined under OPRA and not subject to public access. Thus, the Custodian did not unlawfully deny access to said record. N.J.S.A. 47:1A-1.1. *See* Nance v. Scotch Plains Police Dep't, GRC Complaint No. 2003-125 (January 2005). *See also* Rivera v. Passaic Cnty. Sheriff's Office, GRC Complaint No. 2010-152 (May 2011); Connelly v. Twp. of Montville (Morris), GRC Complaint No. 2013-59 (September 2013).
3. The Custodian did not unlawfully deny access to the Complainant's request for arrest records, as the request failed to contain reasonable identifiers to locate a responsive document. Goodman v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2010-323 (April 2012). *See also* MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

Prepared By: Samuel A. Rosado, Esq.  
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.  
Deputy Executive Director

January 20, 2015