



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

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Acting Commissioner

FINAL DECISION

May 26, 2015 Government Records Council Meeting

Lemont Love
Complainant

Complaint No. 2014-223

v.

Spotswood Police Department (Middlesex)
Custodian of Record

At the May 26, 2015 public meeting, the Government Records Council (“Council”) considered the May 19, 2015 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. On April 8, 2015, the fifth (5th) business day after receipt of the Council’s Order, the Custodian provided the records to the Complainant and simultaneously provided certified confirmation to the Executive Director. Therefore, the Custodian complied with the Council’s March 31, 2015, Interim Order because he responded in the prescribed time frame by providing the responsive reports with appropriate redactions as ordered and simultaneously providing certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to responsive arrest reports requested by the Complainant. However, the Custodian timely complied with the Council’s March 31, 2015, Interim Order and provided the responsive reports, with appropriate redactions, to the Council and to the Complainant. 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 do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

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 26th Day of May, 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: May 28, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
May 26, 2015 Council Meeting**

**Lemont Love¹
Complainant**

GRC Complaint No. 2014-223

v.

**Spotswood Police Department (Middlesex)²
Custodial Agency**

Records Relevant to Complaint: Hard copies of any and all police reports and/or complaints signed against Kristen Ellis.

Custodian of Record: Captain Joseph Seylaz
Request Received by Custodian: May 12, 2014
Response Made by Custodian: May 19, 2014
GRC Complaint Received: June 4, 2014

Background

March 31, 2015 Council Meeting:

At its March 31, 2015, public meeting, the Council considered the March 24, 2015, 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 has not borne his burden proving that he lawfully denied access to the Complainant's OPRA request based on the statute's exemption of "criminal investigatory records" from public access. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012). Accordingly, the Custodian shall provide to the Complainant copies of any arrest records or complaints already located, making all appropriate redactions pursuant to N.J.S.A. 47:1A-2.2, and any additional responsive records not exempt from disclosure under OPRA. *See* Dawara v. Office of the Essex Cnty. Adm'r, GRC Complaint No. 2013-267 (March 2014); Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008). *See also* Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).
2. **The Custodian shall comply with item number one (#1) above within five (5) business days from receipt of the Council's Interim Order with appropriate**

¹ No legal representation listed on record.

² Represented by Rajvir S. Goomer, Esq. of Hoagland, Longo, Moran, Dunst & Doukas, LLP (New Brunswick, NJ).
Lemont Love v. Spotswood Police Department (Middlesex), 2014-223 – Supplemental Findings and Recommendations of the Executive Director 1

redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,³ to the Executive Director.⁴

3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Procedural History:

On April 1, 2015, the Council distributed its Interim Order to all parties. On April 8, 2015, the Custodian responded to the Council's Interim Order and copied the Complainant. The Custodian certified that he attached to his compliance all of the responsive arrest records or complaints not exempt from disclosure under ORPA and redacted same in accordance with the Council's Interim Order.

Analysis

Compliance

At its March 31, 2015, meeting, the Council ordered the Custodian to provide copies of any arrest records or complaints already located, making all appropriate redactions pursuant to N.J.S.A. 47:1A-2.2, as well as any additional responsive records not exempt from disclosure under OPRA. Further, the Council ordered the Custodian to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On April 1, 2015, 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 April 8, 2015.

On April 8, 2015, the fifth (5th) business day after receipt of the Council's Order, the Custodian provided the records to the Complainant and simultaneously certified confirmation to the Executive Director. Therefore, the Custodian complied with the Council's March 31, 2015, Interim Order because he responded in the prescribed time frame by providing the responsive reports with appropriate redactions as ordered and simultaneously providing certified confirmation of compliance to the Executive Director.

Knowing & Willful

OPRA states that "[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of

³ "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."

⁴ 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.

the circumstances, shall be subject to a civil penalty . . .” N.J.S.A. 47:1A-11(a). OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states “. . . [i]f the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA] . . .” N.J.S.A. 47:1A-7(e).

Certain legal standards must be considered when making the determination of whether the Custodian’s actions rise to the level of a “knowing and willful” violation of OPRA. The following statements must be true for a determination that the Custodian “knowingly and willfully” violated OPRA: the Custodian’s actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170, 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian’s actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian’s actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div.1993)); the Custodian’s actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86, 107 (App. Div. 1996)).

Here, the Custodian unlawfully denied access to responsive arrest reports requested by the Complainant. However, the Custodian timely complied with the Council’s March 31, 2015, Interim Order and provided the responsive reports, with appropriate redactions, to the Council and to the Complainant. 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 do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. On April 8, 2015, the fifth (5th) business day after receipt of the Council’s Order, the Custodian provided the records to the Complainant and simultaneously provided certified confirmation to the Executive Director. Therefore, the Custodian complied with the Council’s March 31, 2015, Interim Order because he responded in the prescribed time frame by providing the responsive reports with appropriate redactions as ordered and simultaneously providing certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to responsive arrest reports requested by the Complainant. However, the Custodian timely complied with the Council’s March 31, 2015, Interim Order and provided the responsive reports, with appropriate redactions,

to the Council and to the Complainant. 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 do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Prepared By: Husna Kazmir
Staff Attorney

Approved By: Dawn R. SanFilippo
Deputy Executive Director

May 19, 2015



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

March 31, 2015 Government Records Council Meeting

Lemont Love
Complainant

Complaint No. 2014-223

v.

Spotswood Police Department (Middlesex)
Custodian of Record

At the March 31, 2015 public meeting, the Government Records Council (“Council”) considered the March 24, 2015 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 has not borne his burden proving that he lawfully denied access to the Complainant’s OPRA request based on the statute’s exemption of “criminal investigatory records” from public access. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012). Accordingly, the Custodian shall provide to the Complainant copies of any arrest records or complaints already located, making all appropriate redactions pursuant to N.J.S.A. 47:1A-2.2, and any additional responsive records not exempt from disclosure under OPRA. *See* Dawara v. Office of the Essex Cnty. Adm’r, GRC Complaint No. 2013-267 (March 2014); Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008). *See also* Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).
2. **The Custodian shall comply with item number one (#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, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

¹ “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.”

² 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.

Interim Order Rendered by the
Government Records Council
On The 31st Day of March, 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: April 1, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 31, 2015 Council Meeting**

**Lemont Love¹
Complainant**

GRC Complaint No. 2014-223

v.

**Spotswood Police Department (Middlesex)²
Custodial Agency**

Records Relevant to Complaint:

Hard copies of any and all police reports and/or complaints signed against Kristen Ellis.

Custodian of Record: Captain Joseph Seylaz
Request Received by Custodian: May 12, 2014
Response Made by Custodian: May 19, 2014
GRC Complaint Received: June 4, 2014

Background³

Request and Response:

On May 9, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On May 19, 2014, the Custodian responded, in writing, denying access to the request as comprising criminal investigatory records.

Denial of Access Complaint:

On June 4, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the criminal complaints and police reports are public records and alleged a personal animus against him by the Spotswood Police Department (“SPD”). Based upon his contact address, the Complainant is currently incarcerated at New Jersey State Prison.

¹ No legal representation listed on record.

² Represented by Rajvir S. Goomer, Esq. of Hoagland, Longo, Moran, Dunst & Doukas, LLP (New Brunswick, NJ).

³ 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 July 22, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian failed to provide dates of when he received the OPRA request, as well as the date of response. The Custodian’s SOI also included the responsive records but failed to certify as to whether he provided any of the records to the Complainant.

Additional Submissions

On February 6, 2015, the GRC submitted a request for additional information to the Custodian, seeking facts and clarification regarding his handling of the Complainant’s OPRA request. On February 13, 2015, the Custodian responded to the GRC’s additional information request, certifying the date of receipt and response to the Complainant’s OPRA request. The Custodian also certified that the Complainant’s request was denied, stating that the responsive documents constitute criminal investigatory records under N.J.S.A. 47:1A-1.1.

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.

The New Jersey Appellate Division has held that OPRA “is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records readily accessible for inspection, copying, or examination.” MAG, 375 N.J. Super. at 546 (citing N.J.S.A. 47:1A-1) (quotations omitted).

The Court reasoned that:

MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted.

Id. at 549.

The Court further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt In short, OPRA does not countenance open-ended searches of an agency’s files.” *Id.* at 549; *Bent*, 381 *N.J. Super.* at 37; *N.J. Builders Ass’n v. N.J. Council on Affordable Hous.*, 390 *N.J. Super.* 166, 180 (App. Div. 2007); *Schuler v. Borough of Bloomsbury*, GRC Complaint No. 2007-151 (February 2009).

In contrast, the court in *Burnett v. Cnty. of Gloucester*, 415 *N.J. Super.* 506 (App. Div. 2010) evaluated a request for “[a]ny and all settlements, releases or similar documents entered into, approved or accepted from 1/1/2006 to present.” *Id.* at 508 (emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. *Id.* at 515-16. Likewise, the court in *Burke v. Brandes*, 429 *N.J. Super.* 169 (App. Div. 2012) found a request for the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. *Id.* at 176.

OPRA further states that “[a] government record shall not include . . . *criminal investigatory records*[.]” *N.J.S.A.* 47:1A-1.1 (emphasis added). OPRA defines a “criminal investigatory record” 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.* The Council has determined that, under OPRA, “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and include[] information that is part and parcel of an investigation, confirmed and unconfirmed.” *Janeczko v. Div. of Criminal Justice*, GRC Complaint Nos. 2002-79 & 2002-80 (June 2004).

However, not all law enforcement records are exempt from disclosure. In *Dawara v. Office of the Essex Cnty. Adm’r*, GRC Complaint No. 2013-267 (March 2014), the complainant sought “all my police report[s] for October 24-2000.” The custodian argued that the request was overly broad and that a request for “police reports” is exempt from disclosure as criminal investigatory records. The GRC disagreed, finding that the request was “confined to a specific subject matter (police reports), and the sought records are clearly and reasonably described with sufficient identifying information (the Complainant’s reports from a certain date).” *Id.* (citing *Burke*, 429 *N.J. Super.* at 176; *Burnett*, 415 *N.J. Super.* at 515-16). Furthermore, the GRC found the request for “police report[s]” may contain responsive records within this category of documents and reports, such as arrest reports, that may be subject to disclosure. *Id.* (citing *Morgano v. Essex Cnty. Prosecutor’s Office*, GRC Complaint No. 2007-156 (February 2008)). Therefore, the Council held that the custodian did not prove a lawful denial of access based on the criminal investigatory records exemption. *Id.*

Here, the Complainant sought any and all “police reports and/or complainants signed against Kristen Ellis.” Similar to *Dawara*, the Complainant’s request for “police reports” and “complaints” reasonably describes the subject matter. GRC No. 2013-267. In contrast however, the Complainant’s request failed to identify a specific date or range of dates for the police reports and complaints. Thus, absent specific dates or range of dates, the Complainant’s request is overly broad and invalid. *See MAG*, 375 *N.J. Super.* at 549; *Burke*, 429 *N.J. Super.* at 176; *Burnett*,

415 N.J. Super. at 515-16. *See also* Goodman v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2010-323 (April 2012). However, notwithstanding the invalidity of the Complainant's request on its face, the evidence in the record demonstrates that the Custodian was able to locate responsive records. *See* Burke, 429 N.J. Super. at 176. Therefore, among the located records there may be arrest records and complaints that may not be covered by the police investigatory records exemption and subject to disclosure. *See* Morgano, GRC No. 2007-156.

However, the evidence of record demonstrates that the Complainant, an incarcerated individual, is seeking police records involving an apparently unrelated individual. As such, the Custodian must take into consideration the privacy provisions under N.J.S.A. 47:1A-2.2 prior to any release of responsive records.

Therefore, the Custodian has not borne his burden proving that he lawfully denied access to the Complainant's OPRA request based on the statute's exemption of "criminal investigatory records" from public access. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Burke, 429 N.J. Super. at 176. Accordingly, the Custodian shall provide to the Complainant copies of any arrest records or complaints already located, making all appropriate redactions pursuant to N.J.S.A. 47:1A-2.2, and any additional responsive records not exempt from disclosure under OPRA. *See* Dawara, GRC No. 2007-267; Morgano, GRC No. 2007-156. *See also* Janeczko, GRC Nos. 2002-79 & 2002-80.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has not borne his burden proving that he lawfully denied access to the Complainant's OPRA request based on the statute's exemption of "criminal investigatory records" from public access. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012). Accordingly, the Custodian shall provide to the Complainant copies of any arrest records or complaints already located, making all appropriate redactions pursuant to N.J.S.A. 47:1A-2.2, and any additional responsive records not exempt from disclosure under OPRA. *See* Dawara v. Office of the Essex Cnty. Adm'r, GRC Complaint No. 2013-267 (March 2014); Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008). *See also* Janeczko v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).
2. **The Custodian shall comply with item number one (#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, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁴ to the Executive Director.⁵

3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Samuel A. Rosado
Staff Attorney

Approved By: Dawn R. SanFilippo
Deputy Executive Director

March 24, 2015

⁴ "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."

⁵ 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.