



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  
Commissioner

**FINAL DECISION**

**June 28, 2016 Government Records Council Meeting**

Paul J. Miola  
Complainant

v.

Borough of Roseland (Essex)  
Custodian of Record

Complaint No. 2015-251

At the June 28, 2016 public meeting, the Government Records Council (“Council”) considered the June 21, 2016 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 because the requested record is not an immediate access record, and because the Complainant verified his complaint before the statutory time period provided for the Custodian to respond had expired, this complaint is materially defective and must be dismissed. *See also Sallie v. NJ Dep’t of Banking and Ins.*, GRC Complaint No. 2007-226 (April 2009).

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 28<sup>th</sup> Day of June, 2016

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: June 30, 2016**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 21, 2016 Council Meeting**

**Paul J. Miola**<sup>1</sup>  
**Complainant**

**GRC Complaint No. 2015-251**

v.

**Borough of Roseland (Essex)**<sup>2</sup>  
**Custodial Agency**

**Records Relevant to Complaint:** Copy of a “police report for Anna Miola incident on July 8, 2015.”

**Custodian of Record:** Jock H. Watkins

**Request Received by Custodian:** July 21, 2015<sup>3</sup>

**Response Made by Custodian:** July 29, 2015

**GRC Complaint Received:** July 29, 2015

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

**Request and Response:**

On July 21, 2015, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 29, 2015, the sixth (6<sup>th</sup>) business day following receipt of said request, the Custodian responded in writing, disclosing the record responsive to the request in redacted form. The Custodian stated that the record was redacted pursuant to Executive Order No. 26 (McGreevey) to deny access to information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation.

**Denial of Access Complaint:**

On July 29, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that he provided his OPRA request to the Custodian on July 20, 2015 and never received a response.

---

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

<sup>2</sup> Represented by Gregory F. Kotchick, Esq., of Durkin & Durkin, LLP (West Caldwell, NJ).

<sup>3</sup> The OPRA request is time-stamped received by the Clerk’s Office on this date.

<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.

On August 3, 2015, the Complainant filed an amended Denial of Access Complaint with the GRC, wherein he states that he received from the Custodian a redacted police report for case number 2015-010788. The Complainant contends that the redactions are not lawful pursuant to Executive Order No. 26 (McGreevey) because a police officer is not qualified to provide the type of information described in the exemption.

#### Statement of Information:

On August 28, 2015, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on July 21, 2015, and responded in writing on July 29, 2015. The Custodian certifies that the record responsive to the complaint is Police Department Complaint Report – Case No. 2015-010788, consisting of a single page. The Custodian certifies that the record was disclosed to the Complainant on July 29, 2015, redacted to delete “information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation” pursuant to Executive Order No. 26 (McGreevey) and the Federal Health and Insurance Portability and Accountability Act of 1996 (“HIPPA”).

The Custodian’s Counsel first argues that the complaint was filed prematurely. Counsel next argues that the requested record, which the Custodian disclosed to the Complainant on July 29, 2015, was properly redacted pursuant to Executive Order No. 26 (McGreevey) to delete information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation. Counsel contends that the Complainant’s assertion that “a police officer is not qualified to provide the type of [f] information described in the exemption” overlooks applicable case law. In support of his argument, Counsel cites Rivera v. Office of the Cnty. Prosecutor, 2012 N.J. Super. Unpub. LEXIS 1921, 18-19 (Law Div. 2012), noting that “police officers are trained to recognize when an individual is having a ‘psychological incident.’” The Custodian’s Counsel contends that the reasoning in Rivera applies to the instant complaint; therefore the Complainant’s claim that a police officer is not qualified to provide such information is without merit. Finally, Counsel argues that disclosure of the redacted information could violate HIPPA.

### 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.

OPRA also provides that a custodian “shall grant access to a government record or deny access to a government record as soon as possible, but not later than seven business days after receiving the request...” N.J.S.A. 47:1A-5(i). OPRA further provides that “[a] person who is denied access to a government record . . . may institute a proceeding to challenge the custodian’s decision by filing . . . a complaint with the Government Records Council...” N.J.S.A. 47:1A-6.

In Sallie v. NJ Dep't of Banking and Ins., GRC Complaint No. 2007-226 (April 2009), the complainant filed a Denial of Access Complaint with the GRC, asserting that he had not received a response from the custodian and seven business days would have passed by the time the GRC received the complaint. The custodian argued that the complainant filed the complaint prior to the expiration of the statutorily-mandated time frame. The Council held that “because the Complainant’s cause of action was not ripe at the time he verified his Denial of Access Complaint...the complaint is materially defective and therefore should be dismissed.”

Here, the evidence of record reveals that the Complainant provided his OPRA request to the Custodian on July 21, 2015, and subsequently verified the complaint on July 29, 2015, which is the sixth (6<sup>th</sup>) business day from the date the Custodian received the Complainant’s request. Therefore, because OPRA provides that a custodian has up to seven business days following receipt of a request to grant or deny access, no denial of access had occurred at the time the Complainant filed this complaint.

Accordingly, because the requested record is not an immediate access record, and because the Complainant verified his complaint before the statutory time period provided for the Custodian to respond had expired, this complaint is materially defective and must be dismissed. *See also* Sallie, GRC 2007-226.<sup>5</sup>

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the requested record is not an immediate access record, and because the Complainant verified his complaint before the statutory time period provided for the Custodian to respond had expired, this complaint is materially defective and must be dismissed. *See also* Sallie v. NJ Dep't of Banking and Ins., GRC Complaint No. 2007-226 (April 2009).

Prepared By: John E. Stewart

June 21, 2016

---

<sup>5</sup> Because the Denial of Access Complaint is defective, *a fortiori*, the Amended Denial of Access Complaint is defective.