



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

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**October 30, 2018 Government Records Council Meeting**

Robert Kovacs  
Complainant

Complaint No. 2015-264

v.

Toms River Police Department (Ocean)  
Custodian of Record

At the October 30, 2018 public meeting, the Government Records Council (“Council”) considered the October 23, 2018 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. The Custodian complied with the Council’s September 25, 2018 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance, wherein she stated that one (1) police incident report ordered for disclosure by the Council following an *in camera* examination was disclosed to the Complainant.
2. The original Custodian insufficiently responded to the Complainant’s OPRA request, and denied the Complainant access to a police incident report that the Council subsequently determined via an *in camera* examination should have been disclosed. The present Custodian timely complied with the Council’s August 28, 2018 Interim Order and September 25, 2018 Interim Order by submitting the police incident report to the Council for *in camera* examination and subsequently disclosing the record to the Complainant as required by the Council. Because the evidence of record does not indicate that the actions of the original Custodian had a positive element of conscious wrongdoing or were intentional and deliberate, the actions of the original Custodian did 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 30<sup>th</sup> Day of October, 2018

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 1, 2018**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Council Staff  
October 30, 2018 Council Meeting**

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

**GRC Complaint No. 2015-264**

v.

**Toms River Police Department (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

OPRA Request Dated June 27, 2015:

“Provide one copy of any and all police reports/documents, including MV summonses, pertaining to or containing the names, 1) Anthony Lombardo 2) Kathy Lombardo, from January 1<sup>st</sup> 1999 to the present date.”

OPRA Request Dated July 19, 2015:

1. “Provide one copy of each police incident report within the past 7 years containing the name Cheryl Pizzichillo” inclusive of a birth date.
2. “Provide one copy of each traffic stop or traffic summons report containing the name Cheryl Pizzichillo” inclusive of a birth date.

**Custodian of Records:** Alison Carlisle<sup>3</sup>

**Requests Received by Custodian:** July 6, 2015 and July 30, 2015

**Response Made by Custodian:** July 7, 2015 and July 31, 2015

**GRC Complaint Received:** August 18, 2015

**Background**

September 25, 2018 Council Meeting:

At its September 25, 2018 public meeting, the Government Records Council (“Council”) considered the September 18, 2018 Supplemental Findings and Recommendations of the Council

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

<sup>2</sup> Represented by Anthony Merlino, Esq. (Toms River, NJ).

<sup>3</sup> Original Custodian, and Custodian at the time the Statement of Information was prepared/submitted, was J. Mark Mutter.

Staff 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 complied with the Council's August 28, 2018 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance, wherein she stated that there are no motor vehicle summonses responsive to the Complainant's request, and included one (1) record for *in camera* examination.
2. Because the original Custodian denied access to the requested police incident report on several grounds, only one of which was deemed valid by the Council; to wit, that the incident report was a criminal investigatory record, and because the Council's *in camera* examination revealed the record was not a criminal investigatory record, the original Custodian failed to bear his burden of proof that said record was exempt from access pursuant to N.J.S.A. 47:1A-1.1, and the record must be disclosed. See Blue v. Wall Twp. Police Dep't, GRC Complaint No. 2002-47 (August 2003).
3. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in paragraph 2 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, to the Council Staff.**
4. 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 September 27, 2018, the Council distributed its September 25, 2018 Interim Order to all parties. On September 28, 2018, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Council Staff, averring that she sent to the Complainant via first class mail a copy of the record ordered by the Council for disclosure. The Custodian also averred that she sent the Complainant a copy of the certified confirmation of compliance.

#### Analysis

#### Compliance

On September 25, 2018, the Council ordered the above-referenced compliance. On September 27, 2018, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Therefore, compliance was due on or before October 4, 2018. On September 27, 2018, the day of receipt of the Council's Order, the Custodian forwarded certified confirmation of compliance to the Council Staff, averring

that one (1) copy of the police incident report ordered for disclosure by the Council pursuant to an *in camera* examination, and attached to the certification as Exhibit A, was disclosed to the Complainant via first class mail, together with a copy of the certified confirmation of compliance.<sup>4</sup>

Therefore, the Custodian complied with the Council's September 25, 2018 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance, wherein she stated that one (1) police incident report ordered for disclosure by the Council following an *in camera* examination was disclosed to the Complainant.

### **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 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)).

The original Custodian insufficiently responded to the Complainant's OPRA request, and denied the Complainant access to a police incident report that the Council subsequently determined via an *in camera* examination should have been disclosed. The present Custodian timely complied with the Council's August 28, 2018 Interim Order and September 25, 2018 Interim Order by submitting the police incident report to the Council for *in camera* examination and subsequently disclosing the record to the Complainant as required by the Council. Because the evidence of record does not indicate that the actions of the original Custodian had a positive element of

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<sup>4</sup> The GRC notes that the Custodian sent the Complainant a copy of the certified confirmation of compliance even though the Custodian was not ordered to do so. Exhibit A of the certification included an unredacted copy of the police incident report and the Custodian did not include a document index explaining the lawful basis for any redaction(s). As such, it appears that the Custodian did not redact any portion of the disclosed record despite the Council's observation in the Findings and Recommendations incorporated within the September 25, 2018 Interim Order that “personal information contained in the report can, and should, be redacted prior to disclosure.”

conscious wrongdoing or were intentional and deliberate, the actions of the original Custodian did 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 Council Staff respectfully recommends the Council find that:

1. The Custodian complied with the Council's September 25, 2018 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance, wherein she stated that one (1) police incident report ordered for disclosure by the Council following an *in camera* examination was disclosed to the Complainant.
2. The original Custodian insufficiently responded to the Complainant's OPRA request, and denied the Complainant access to a police incident report that the Council subsequently determined via an *in camera* examination should have been disclosed. The present Custodian timely complied with the Council's August 28, 2018 Interim Order and September 25, 2018 Interim Order by submitting the police incident report to the Council for *in camera* examination and subsequently disclosing the record to the Complainant as required by the Council. Because the evidence of record does not indicate that the actions of the original Custodian had a positive element of conscious wrongdoing or were intentional and deliberate, the actions of the original Custodian did 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: John E. Stewart

October 23, 2018



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

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

INTERIM ORDER

September 25, 2018 Government Records Council Meeting

Robert Kovacs  
Complainant

Complaint No. 2015-264

v.

Toms River Police Department (Ocean)  
Custodian of Record

At the September 25, 2018 public meeting, the Government Records Council (“Council”) considered the September 18, 2018 Supplemental Findings and Recommendations of the Council Staff 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 complied with the Council’s August 28, 2018 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance, wherein she stated that there are no motor vehicle summonses responsive to the Complainant’s request, and included one (1) record for *in camera* examination.
2. Because the original Custodian denied access to the requested police incident report on several grounds, only one of which was deemed valid by the Council; to wit, that the incident report was a criminal investigatory record, and because the Council’s *in camera* examination revealed the record was not a criminal investigatory record, the original Custodian failed to bear his burden of proof that said record was exempt from access pursuant to N.J.S.A. 47:1A-1.1, and the record must be disclosed. See Blue v. Wall Twp. Police Dep’t, GRC Complaint No. 2002-47 (August 2003).
3. **On the basis of the Council’s determination in this matter, the Custodian shall comply with the Council’s Findings of the *In Camera* Examination set forth in paragraph 2 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,<sup>1</sup> to the Council Staff.<sup>2</sup>**

<sup>1</sup> "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."

<sup>2</sup> 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.



4. 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.

Interim Order Rendered by the  
Government Records Council  
On The 25<sup>th</sup> Day of September, 2018

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 27, 2018**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Council Staff  
September 25, 2018 Council Meeting**

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

**GRC Complaint No. 2015-264**

v.

**Toms River Police Department (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

OPRA Request Dated June 27, 2015:

“Provide one copy of any and all police reports/documents, including MV summonses, pertaining to or containing the names, 1) Anthony Lombardo 2) Kathy Lombardo, from January 1<sup>st</sup> 1999 to the present date.”

OPRA Request Dated July 19, 2015:

1. “Provide one copy of each police incident report within the past 7 years containing the name Cheryl Pizzichillo” inclusive of a birth date.
2. “Provide one copy of each traffic stop or traffic summons report containing the name Cheryl Pizzichillo” inclusive of a birth date.

**Custodian of Records:** Alison Carlisle<sup>3</sup>

**Requests Received by Custodian:** July 6, 2015 and July 30, 2015

**Response Made by Custodian:** July 7, 2015 and July 31, 2015

**GRC Complaint Received:** August 18, 2015

**Background**

August 28, 2018 Council Meeting:

At its August 28, 2018 public meeting, the Government Records Council (“Council”) considered the August 21, 2018 Findings and Recommendations of the Council Staff and all

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

<sup>2</sup> Represented by Anthony Merlino, Esq. (Toms River, NJ).

<sup>3</sup> Original Custodian, and Custodian at the time the Statement of Information was prepared/submitted, was J. Mark Mutter.

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's response was insufficient because he failed to respond in writing to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Custodian lawfully denied access to the part of the Complainant's June 27, 2015 request seeking "any and all police reports/documents" because, notwithstanding the Complainant's specifying of names and a date range, such a request is invalid because it fails to identify a specific government record. N.J.S.A. 47:1A-6. MAG Entm't, LLC v. Div. Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007).
3. Because the part of the Complainant's June 27, 2015 request seeking "M[otor] V[ehicle] summonses" specifically identified the requested records, the Custodian unlawfully denied access. The Custodian must therefore disclose to the Complainant any responsive motor vehicle summonses pertaining to or containing the names Anthony Lombardo and Kathy Lombardo dated January 1, 1999 to June 27, 2015.
4. **The Custodian shall comply with paragraph No. 3 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, to the GRC.**
5. The Complainant's OPRA request dated July 19, 2015, item number 2, is invalid because it fails to seek identifiable government records. MAG Entm't, LLC v. Div. Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). *See also* Love v. Spotswood Police Dep't (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015). Thus, the Custodian did not unlawfully deny access to this request item. N.J.S.A. 47:1A-6.
6. The Custodian failed to bear his burden of proof that he lawfully denied access to the records responsive to item number 1 of the July 19, 2015 request. N.J.S.A. 47:1A-6. The Complainant's request sufficiently identified the records such that the Custodian could conduct a search. *See* Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). Therefore, the Custodian shall conduct a search for, and retrieve, all police incident reports during the period July 19, 2008 to July 19, 2015 containing the name Cheryl Pizzichillo for an *in camera* review by the Council to determine whether they pertain to a criminal investigation and are therefore exempt from access pursuant to N.J.S.A.

47:1A-1.1. See Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).

7. **The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see paragraph 4 above), as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
8. 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 August 29, 2018, the Council distributed its August 28, 2018 Interim Order to all parties. On September 4, 2018, the Custodian responded to the Council's Interim Order by providing certified confirmation of compliance to the Council Staff and submitting one (1) record for *in camera* examination.<sup>4</sup>

### Analysis

#### Compliance

On August 28, 2018, the Council ordered the above-referenced compliance. On August 29, 2018, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Therefore, compliance was due on or before September 6, 2018. On September 4, 2018, the third (3<sup>rd</sup>) day following receipt of the Council's Interim Order, the Custodian forwarded certified confirmation of compliance to the Council Staff, together with one (1) police incident report during the period July 19, 2008 to July 19, 2015 containing the name Cheryl Pizzichillo for *in camera* examination.

Therefore, the Custodian complied with the Council's August 28, 2018 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance, wherein she stated that there are no motor vehicle summonses responsive to the Complainant's request, and included one (1) record for *in camera* examination.

#### 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

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<sup>4</sup> The Custodian also included documents which were not responsive to the request and those documents were returned to the Custodian's Council via letter dated September 7, 2018.

“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. N.J.S.A. 47:1A-6.

The Custodian located one (1) police incident report during the period July 19, 2008 to July 19, 2015 containing the name Cheryl Pizzichillo, which she submitted for the *in camera* examination pursuant to paragraph 7 of the Findings and Recommendations incorporated within the Council’s Interim Order. The submitted record is a four (4) page Toms River Police Department Officer Report for Case 09-22170 dated April 27, 2009.

The GRC conducted an *in camera* examination on the submitted record to determine whether it pertains to a criminal investigation and is therefore exempt from access pursuant to N.J.S.A. 47:1A-1.1. The results of this examination reveal that the record is a police report documenting a traffic stop for which the motorist, Cheryl Pizzichillo, received a motor vehicle summons for a moving violation. The report does not reference any criminal offense(s) or investigation thereof.<sup>5</sup>

In Blue v. Wall Twp. Police Dep’t, GRC Complaint No. 2002-47 (August 2003), the Council held that “ ... a Title 39 motor vehicle offense ... was not a "crime" and that, therefore, police investigation of such offenses was accessible under OPRA and not a "criminal investigatory record" exempt from access pursuant to N.J.S.A. 47:1A-1.1[.]”<sup>6</sup> Here, upon *in camera* examination, the submitted record was found to be a report documenting a traffic stop and issuance of a summons for a non-criminal traffic violation. Therefore here, as in Blue, *supra*, the requested record concerns a motor vehicle offense and is not exempt from access as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1.

Therefore, because the original Custodian denied access to the requested police incident report on several grounds, only one of which was deemed valid by the Council; to wit, that the incident report was a criminal investigatory record, and because the Council’s *in camera* examination revealed the record was not a criminal investigatory record, the original Custodian failed to bear his burden of proof that said record was exempt from access pursuant to N.J.S.A. 47:1A-1.1, and the record must be disclosed. See Blue, GRC 2002-47.

### **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.

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<sup>5</sup> The GRC notes that the original custodian asserted, among other reasons for denial, that the requested police report “[p]otentially seeks victim’s records exempt from disclosure.” There is nothing in the evidence of record, however, to support such a claim. Moreover, personal information contained in the report can, and should, be redacted prior to disclosure.

<sup>6</sup> Title 39 is the motor vehicle code, and a “Title 39 motor vehicle offense” would be the type of activity that is the subject of the police report submitted for the *in camera* examination.

## Conclusions and Recommendations

The Council Staff respectfully recommends the Council find that:

1. The Custodian complied with the Council's August 28, 2018 Interim Order because the Custodian in a timely manner forwarded certified confirmation of compliance, wherein she stated that there are no motor vehicle summonses responsive to the Complainant's request, and included one (1) record for *in camera* examination.
2. Because the original Custodian denied access to the requested police incident report on several grounds, only one of which was deemed valid by the Council; to wit, that the incident report was a criminal investigatory record, and because the Council's *in camera* examination revealed the record was not a criminal investigatory record, the original Custodian failed to bear his burden of proof that said record was exempt from access pursuant to N.J.S.A. 47:1A-1.1, and the record must be disclosed. See Blue v. Wall Twp. Police Dep't, GRC Complaint No. 2002-47 (August 2003).
3. **On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the *In Camera* Examination set forth in paragraph 2 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,<sup>7</sup> to the Council Staff.<sup>8</sup>**
4. 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: John E. Stewart

September 18, 2018

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<sup>7</sup> "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."

<sup>8</sup> 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.



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

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**INTERIM ORDER**

**August 28, 2018 Government Records Council Meeting**

Robert Kovacs  
Complainant

Complaint No. 2015-264

v.

Toms River Police Department (Ocean)  
Custodian of Record

At the August 28, 2018 public meeting, the Government Records Council (“Council”) considered the August 21, 2018 Findings and Recommendations of the Council Staff 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’s response was insufficient because he failed to respond in writing to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Custodian lawfully denied access to the part of the Complainant’s June 27, 2015 request seeking “any and all police reports/documents” because, notwithstanding the Complainant’s specifying of names and a date range, such a request is invalid because it fails to identify a specific government record. N.J.S.A. 47:1A-6. MAG Entm’t, LLC v. Div. Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007).
3. Because the part of the Complainant’s June 27, 2015 request seeking “M[otor] V[ehicle] summonses” specifically identified the requested records, the Custodian unlawfully denied access. The Custodian must therefore disclose to the Complainant any responsive motor vehicle summonses pertaining to or containing the names Anthony Lombardo and Kathy Lombardo dated January 1, 1999 to June 27, 2015.
4. **The Custodian shall comply with paragraph No. 3 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,<sup>1</sup> to the GRC.<sup>2</sup>**

5. The Complainant's OPRA request dated July 19, 2015, item number 2, is invalid because it fails to seek identifiable government records. MAG Entm't, LLC v. Div. Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). *See also* Love v. Spotswood Police Dep't (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015). Thus, the Custodian did not unlawfully deny access to this request item. N.J.S.A. 47:1A-6.
6. The Custodian failed to bear his burden of proof that he lawfully denied access to the records responsive to item number 1 of the July 19, 2015 request. N.J.S.A. 47:1A-6. The Complainant's request sufficiently identified the records such that the Custodian could conduct a search. *See* Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). Therefore, the Custodian shall conduct a search for, and retrieve, all police incident reports during the period July 19, 2008 to July 19, 2015 containing the name Cheryl Pizzichillo for an *in camera* review by the Council to determine whether they pertain to a criminal investigation and are therefore exempt from access pursuant to N.J.S.A. 47:1A-1.1. *See* Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
7. **The Custodian must deliver<sup>3</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see paragraph 4 above), as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>4</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
8. 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.

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<sup>1</sup> "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."

<sup>2</sup> 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.

<sup>3</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>4</sup> "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."

Interim Order Rendered by the  
Government Records Council  
On The 28<sup>th</sup> Day of August, 2018

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: August 29, 2018**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Council Staff  
August 28, 2018 Council Meeting**

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

**GRC Complaint No. 2015-264**

v.

**Toms River Police Department (Ocean)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:**

OPRA Request Dated June 27, 2015:

“Provide one copy of any and all police reports/documents, including MV summonses, pertaining to or containing the names, 1) Anthony Lombardo 2) Kathy Lombardo, from January 1<sup>st</sup> 1999 to the present date.”

OPRA Request Dated July 19, 2015:

1. “Provide one copy of each police incident report within the past 7 years containing the name Cheryl Pizzichillo” inclusive of a birth date.
2. “Provide one copy of each traffic stop or traffic summons report containing the name Cheryl Pizzichillo” inclusive of a birth date.

**Custodian of Records:** Alison Carlisle<sup>3</sup>

**Requests Received by Custodian:** July 6, 2015 and July 30, 2015

**Response Made by Custodian:** July 7, 2015 and July 31, 2015

**GRC Complaint Received:** August 18, 2015

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

Requests and Responses:

The Complainant submitted an Open Public Records Act (“OPRA”) request dated June 27,

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

<sup>2</sup> Represented by Anthony Merlino, Esq. (Toms River, NJ).

<sup>3</sup> Original Custodian, and Custodian at the time the Statement of Information was prepared/submitted, was J. Mark Mutter.

<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 Council Staff the submissions necessary and relevant for the adjudication of this complaint.

2015, seeking the above-mentioned records. The Custodian certified that the request was received on July 6, 2015. On July 7, 2015, one (1) business day following receipt, Diane Hommel, on behalf of the Custodian, responded in writing denying the request as overly broad and non-specific. The Custodian stated that the Complainant must provide a date of birth for the persons named in the request and must specify the date and type of incident.

The Complainant submitted another OPRA request dated July 19, 2015, seeking the above-mentioned records. The Custodian certified that the request was received on July 30, 2015. On July 31, 2015, one (1) business day following receipt, Diane Hommel, on behalf of the Custodian, responded in writing denying the request because it was overly broad, failed to identify a specific record, and required research (citations omitted). The Custodian also denied the request because it potentially sought criminal investigatory records exempt under N.J.S.A. 47:1A-1.1, and potentially sought victim records exempt under N.J.S.A. 47:1A-2.2.

#### Denial of Access Complaint:

On August 18, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant contends that he submitted two (2) OPRA requests to the Custodian dated June 27, 2015 and July 19, 2015, and that both requests were denied. The Complainant states that the July 19, 2015 request contained “clearly identifiable information.”

The Complainant further states that he believes he was denied access to the requested records in retaliation for filing a previous Denial of Access Complaint against the municipality. The Complainant argues that the requested records should not be denied. The Complainant cites Kovacs v. Newark Police Dep’t (Essex), GRC Complaint No. 2014-316 (Interim Order June 30, 2015) in support of his argument.

#### Statement of Information:

On September 1, 2015, the Custodian filed a Statement of Information (“SOF”). The Custodian certifies that he received the Complainant’s OPRA request (dated July 19, 2015) on July 30, 2015, and responded in writing on July 31, 2015. The Custodian further certifies that the Complainant’s request was denied because it:

1. was not a valid request because it was overly broad and failed to identify a specific record. The Custodian cited: Bent v. Twp. of Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); Michelson v. Wyatt, 379 N.J. Super. 611, 619 (App. Div. 2005); MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005).
2. requires research. The Custodian cited Bent, *supra*; MAG, *supra*.
3. potentially seeks a criminal investigatory record exempt from disclosure under N.J.S.A. 47:1A-1.1.

4. potentially seeks a victim's record exempt from disclosure under N.J.S.A. 47:1A-2.2.

The Custodian asserts that the Complainant's request is insufficiently specific because it does not provide enough information to identify the records the Complainant seeks. The Custodian argues that the Complainant did not provide information regarding the specific incident, location, date, or charge. The Custodian contends that to satisfy the Complainant's request, personnel would have to search through every report generated over a number of years that contain the name of the individual to see if a birth date is provided and if it matches the time parameters.<sup>5</sup> The Custodian asserts that OPRA does not require such a tedious research project. The Custodian further contends that the Complainant is an incarcerated felon, and that he is possibly requesting information about one of his victims, or seeking criminal investigatory records. The Custodian asserts that because the Complainant provided little information in his request, the Custodian cannot determine whether the request implicates exceptions for either of these possibilities. For these reasons, the Custodian states that it would be imprudent to provide any responsive records.

#### Additional Submissions:

On July 11, 2018, the GRC notified the Custodian's Counsel that the SOI was deficient because the Custodian did not address the Complainant's June 27, 2015 request. The GRC asked Counsel to have the Custodian address the request, or in the event the Custodian did not receive the request, to certify to that fact. The GRC also asked the Custodian's Counsel to have the Custodian submit a copy of the response to the Complainant's July 19, 2015 request because the Custodian did not attach a copy of the response to the SOI.

On July 11, 2018, the Custodian's Counsel e-mailed the GRC in reply to its earlier correspondence. Although Counsel attached a certification prepared by the present Custodian, he argued that the GRC should dismiss this complaint.<sup>6</sup> The present Custodian averred in the certification that the request dated June 27, 2015 was received on July 6, 2015, and that the Custodian responded to the request on July 7, 2015. The present Custodian further averred that the request dated July 19, 2015 was received on July 30, 2015, and that the Custodian responded to the request on July 31, 2015. The Custodian attached copies of the requests and responses to the certification.

### Analysis

#### Sufficiency of Response

OPRA provides that a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g). Further, in Paff v. Willingboro Bd. of Educ. (Burlington),

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<sup>5</sup> The evidence of record reveals that the Custodian, in the July 7, 2015 response to the Complainant's June 27, 2015 OPRA request, stated that the Complainant must include a date of birth for persons named in a request.

<sup>6</sup> The Custodian's Counsel objected to the Council adjudicating the complaint because (1) the Complainant's residency was never a basis for denial of the requests; and (2) the Custodian never received formal notice that the GRC was holding the complaint pending the Appellate Division's decision with respect to whether out-of-state requestors have standing under OPRA.

GRC Complaint No. 2007-272 (May 2008), the GRC held that "...[t]he Custodian's response was legally insufficient because he failed to respond to each request item individually." Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g).

Here, the Custodian responded to the Complainant's July 19, 2015 request, which contained two (2) request items, by forwarding to the Complainant a checklist of "privileged or protected" categories of records, together with an attachment listing four (4) reasons for denial. Neither the checklist nor the attachment addressed the individual request items.

Therefore, the Custodian's response was insufficient because he failed to respond in writing to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff, GRC 2007-272.

### **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 Entm't, LLC v. Div. Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (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 v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>7</sup> N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super.

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<sup>7</sup> Affirming Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).

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. The Appellate Division determined that the request was not overly broad because it sought a specific type of document, despite failing to specify a particular case to which such document pertained. 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.

In Love v. Spotswood Police Dep’t (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015), the Council held that while the complainant’s request reasonably described the subject matter, the complainant failed to provide a specific date or range of dates within his request. Id. at 3. The Council therefore found that the complainant’s request was overly broad. Id.

#### OPRA Request Dated June 27, 2015

This request sought “any and all police reports/documents, including MV summonses, pertaining to or containing [specified names].” The request also specified a time frame from January 1, 1999 to June 27, 2015.

In Schulz v. New Jersey State Police, GRC Complaint No. 2014-390 (June 2015), the complainant requested “all documents” from a State Police file “including, but not limited to, reports of findings, autopsy reports, field reports, toxicology reports and external reports.” The Council determined that while part of the request was invalid because it was “a blanket request for a class of various documents,” those records within the request that were specifically identifiable were subject to access.

In the Complainant’s June 27, 2015 request, as in Schulz, *supra*, the part of the request seeking “any and all police reports/documents” is a request for a class of various documents. Such a request is invalid because it fails to specifically identify a government record. It would require the Custodian to conduct a search of *every document* maintained or kept on file by the police department, and “OPRA does not countenance open-ended searches of an agency’s files.” MAG, *supra*, at 549.

Accordingly, the Custodian lawfully denied access to the part of the Complainant’s June 27, 2015 request seeking “any and all police reports/documents” because, notwithstanding the Complainant’s specifying of names and a date range, such a request is invalid because it fails to identify a specific government record. N.J.S.A. 47:1A-6. MAG, 375 N.J. Super. 534 at 546; Bent, 381 N.J. Super. 30 at 37; N.J. Builders Ass’n, 390 N.J. Super. 166 at 180.

In the same request, however, the Complainant also sought “M[otor] V[ehicle] summonses.” A motor vehicle summons is a specific type of record. See Burnett, supra. The Complainant also named the persons to whom the record pertained and included a date range as further identifying information. See Burke, supra. As such, this part of the request sought specifically identifiable records.

Accordingly, because the part of the Complainant’s June 27, 2015 request seeking “M[otor] V[ehicle] summonses” specifically identified the requested records, the Custodian unlawfully denied access. The Custodian must therefore disclose to the Complainant any responsive motor vehicle summonses pertaining to or containing the names Anthony Lombardo and Kathy Lombardo dated January 1, 1999 to June 27, 2015.

#### OPRA Request Dated July 19, 2015 – Request Item Number 2

Here, the Complainant sought a copy of “each traffic stop or traffic summons report containing the name Cheryl Pizzichillo” inclusive of a birth date. The Complainant’s request for “traffic summons” reasonably describes the subject matter. However, the Complainant also included “each traffic stop,” which is a request for information rather than for a specific record. Moreover, the request failed to identify a specific date or range of dates. See Love, supra.

Therefore, the Complainant’s OPRA request dated July 19, 2015, item number 2, is invalid because it fails to seek identifiable government records. MAG, 375 N.J. Super. 534 at 546; Bent, 381 N.J. Super. 30 at 37; N.J. Builders Ass’n, 390 N.J. Super. 166 at 180. See also Love, GRC 2014-223. Thus, the Custodian did not unlawfully deny access to this request item. N.J.S.A. 47:1A-6.

#### OPRA Request Dated July 19, 2015 – Request Item Number 1

This request item seeks “. . . one copy of each police incident report within the past 7 years containing the name Cheryl Pizzichillo” inclusive of a birth date. A “police incident report” is a specific type of record. The Complainant further identified the record as containing the name Cheryl Pizzichillo (a date of birth was included as a further identifier).<sup>8</sup> Furthermore, in contrast to the request in Love, supra, the Complainant included a date range, which he specified to be “the past 7 years.” This would calculate to the period July 19, 2008 to July 19, 2015. Thus, the Complainant’s request contained sufficiently identifiable information for the Custodian to conduct a search.

However, the requested record is a “police incident report” and the Council has previously found that a police incident report meets the criteria for a criminal investigatory record. Therefore, the Council determined it was not a government record as defined under OPRA and was not subject to public access pursuant to N.J.S.A. 47:1A-1.1. See Nance v. Scotch Plains Twp. Police Dep’t, GRC Complaint No. 2003-125 (January 2005). See also Rivera v. Passaic Cnty. Sheriff’s Office,

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<sup>8</sup> The Council has previously determined that a request for police reports “containing the name” of an individual serves to specifically identify the subject matter of a record. See Kovacs v. Newark Police Department (Essex), GRC Complaint No. 2014-316 (Interim Order June 30, 2015); reconsidered on other grounds (Final Decision October 27, 2015).

GRC Complaint No. 2010-152 (May 2011) and Connolly v. Twp. of Montville (Morris), GRC Complaint No. 2013-59 (September 2013).

Recently however, in N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541 (2017), the court stated, “[t]he Appellate Division highlighted that some police records relate to an officer’s community-caretaking function; others to the investigation of a crime. NJMG, *supra*, 441 N.J. Super. at 105. Only the latter are covered by the OPRA exception, which thus calls for a case-by-case analysis.” Id. at 569.

Here, there is no indication that the requested police incident report(s) related to the investigation of a crime. And, the Custodian in the SOI listed as two of the four reasons for denial that the request *potentially* sought criminal investigatory records and *potentially* sought victim records. The Custodian’s hunch, however, is not a lawful reason for denying access. Therefore, based upon the content of the complaint and the responding SOI, the GRC is unable to conclude that the Complainant is seeking police incident reports that only pertain to a criminal investigation.

The Custodian did not certify that the requested police incident reports do not exist. As such, it is necessary for the GRC to examine the responsive police incident reports to determine whether they fall under the criminal investigatory exemption in N.J.S.A. 47:1A-1.1.

In Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the court held that:

[T]he GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal . . . There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC’s obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

[Id. at 355.]

Based on the foregoing, the Custodian failed to bear his burden of proof that he lawfully denied access to the records responsive to item number 1 of the July 19, 2015 request. N.J.S.A. 47:1A-6. The Complainant’s request sufficiently identified the records such that the Custodian could conduct a search. See Burke, 429 N.J. Super. at 176. Therefore, the Custodian shall conduct a search for, and retrieve, all police incident reports during the period July 19, 2008 to July 19, 2015 containing the name Cheryl Pizzichillo for an *in camera* review by the Council to determine whether they pertain to a criminal investigation and are therefore exempt from access pursuant to N.J.S.A. 47:1A-1.1. See Paff, 379 N.J. Super. 346.

### **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 Council Staff respectfully recommends the Council find that:

1. The Custodian's response was insufficient because he failed to respond in writing to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. The Custodian lawfully denied access to the part of the Complainant's June 27, 2015 request seeking "any and all police reports/documents" because, notwithstanding the Complainant's specifying of names and a date range, such a request is invalid because it fails to identify a specific government record. N.J.S.A. 47:1A-6. MAG Entm't, LLC v. Div. Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007).
3. Because the part of the Complainant's June 27, 2015 request seeking "M[otor] V[ehicle] summonses" specifically identified the requested records, the Custodian unlawfully denied access. The Custodian must therefore disclose to the Complainant any responsive motor vehicle summonses pertaining to or containing the names Anthony Lombardo and Kathy Lombardo dated January 1, 1999 to June 27, 2015.
4. **The Custodian shall comply with paragraph No. 3 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,<sup>9</sup> to the GRC.<sup>10</sup>**
5. The Complainant's OPRA request dated July 19, 2015, item number 2, is invalid because it fails to seek identifiable government records. MAG Entm't, LLC v. Div. Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007). *See also* Love v. Spotswood Police Dep't (Middlesex), GRC Complaint No. 2014-223 (Interim Order dated March 31, 2015). Thus, the Custodian did not unlawfully deny access to this request item. N.J.S.A. 47:1A-6.

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<sup>9</sup> "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."

<sup>10</sup> 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.



6. The Custodian failed to bear his burden of proof that he lawfully denied access to the records responsive to item number 1 of the July 19, 2015 request. N.J.S.A. 47:1A-6. The Complainant's request sufficiently identified the records such that the Custodian could conduct a search. See Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012). Therefore, the Custodian shall conduct a search for, and retrieve, all police incident reports during the period July 19, 2008 to July 19, 2015 containing the name Cheryl Pizzichillo for an *in camera* review by the Council to determine whether they pertain to a criminal investigation and are therefore exempt from access pursuant to N.J.S.A. 47:1A-1.1. See Paff v. NJ Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
7. **The Custodian must deliver<sup>11</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see paragraph 4 above), as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>12</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
8. 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: John E. Stewart

August 21, 2018<sup>13</sup>

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<sup>11</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>12</sup> "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."

<sup>13</sup> This complaint was prepared for adjudication at the Council's July 31, 2018 meeting; however, the Council chose to table the matter for additional review.