



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**

**January 31, 2017 Government Records Council Meeting**

Annette L. Steinhardt  
Complainant

Complaint No. 2015-414

v.

Somerset County Prosecutor's Office  
Custodian of Record

At the January 31, 2017 public meeting, the Government Records Council ("Council") considered the January 24, 2017 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 the Complainant failed to establish that the complaint should be reconsidered based on new evidence, extraordinary circumstances, fraud, and illegality. She provided no relevant evidence necessitating a change in the GRC's original decision, which found that the Custodian lawfully denied access to exempt criminal investigatory records and additionally that a requested contract was not in the possession of the SCPO. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. *See Cummings v. Bahr*, 295 N.J. Super. 374 (App. Div. 1996); *D'Atria v. D'Atria*, 242 N.J. Super. 392 (Ch. Div. 1990); *In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J.*, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 31<sup>st</sup> Day of January, 2017

Robin Berg Tabakin, Esq., Chair  
Government Records Council  
I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: February 3, 2017**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

*Reconsideration*

**Supplemental Findings and Recommendations of the Executive Director  
January 31, 2017 Council Meeting**

**Annette L. Steinhardt<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-414**

v.

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

**Records Relevant to Complaint:**

**Custodian of Record:** Thomas White

**Request Received by Custodian:** October 22, 2015 and November 2, 2015

**Response Made by Custodian:** October 27, 2015 and November 2, 2015

**GRC Complaint Received:** December 28, 2015

**Background**

**September 29, 2016 Council Meeting:**

At its September 29, 2016 public meeting, the Council considered the August 23, 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, found that because both requests were for exempt criminal investigatory records, the Custodian has borne his burden of proof that the denial of access was lawful pursuant to N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Brewer v. NJ Dep't of Law and Pub. Safety, GRC Complaint No. 2006-204 (October 2007) and Hwang v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-348 (January 2013). Further, the Custodian has certified that the requested contract is not in the files of the Prosecutor's Office. Moreover, there is no competent, credible evidence to refute the Custodian's certification that no responsive records exist. *See* Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

**Procedural History:**

On October 4, 2016, the Council distributed its Final Decision to all parties. On October 18, 2016, the Complainant filed a request for reconsideration of the Council's September 29, 2016 Final Decision based on new evidence, extraordinary circumstances, fraud, and illegality.

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

<sup>2</sup> Represented by Carl A. Taylor, Esq. (Somerville, NJ).

In her request for reconsideration, the Complainant made allegations regarding the actions of certain employees from the Somerset County Prosecutor's Office ("SCPO"), alleging that other individuals "validated" that the SCPO "should never have been able to obtain sexual assault complaint number" (sic). The Complainant attached photographs that she alleged "show[ed] damage did occur against my property." She further argued that the SCPO is "lying when they state there is no evidence." The Complainant raised no other legal arguments.

## Analysis

### Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council, and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the Complainant filed the request for reconsideration of the Council's Order dated October 4, 2016, on October 18, 2016, nine (9) days from the issuance of the Council's Order.

Applicable case law holds that:

"A party should not seek reconsideration merely based upon dissatisfaction with a decision." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, . . . 242 N.J. Super. at 401. "Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement." Ibid.

In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. *See Cummings*, 295 N.J. Super. at 384. The Complainant failed

to establish that the complaint should be reconsidered based on new evidence, extraordinary circumstances, fraud, and illegality. She provided no relevant evidence necessitating a change in the GRC's original decision, which found that the Custodian lawfully denied access to exempt criminal investigatory records and additionally that a requested contract was not in the possession of the SCPO. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. *See D'Atria*, 242 N.J. Super. at 401. Thus, the Complainant's request for reconsideration should be denied. *Cummings*, 295 N.J. Super. at 384; *D'Atria*, 242 N.J. Super. at 401; *Comcast*, 2003 N.J. PUC at 5-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant failed to establish that the complaint should be reconsidered based on new evidence, extraordinary circumstances, fraud, and illegality. She provided no relevant evidence necessitating a change in the GRC's original decision, which found that the Custodian lawfully denied access to exempt criminal investigatory records and additionally that a requested contract was not in the possession of the SCPO. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. *See Cummings v. Bahr*, 295 N.J. Super. 374 (App. Div. 1996); *D'Atria v. D'Atria*, 242 N.J. Super. 392 (Ch. Div. 1990); *In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J.*, 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: Husna Kazmir  
Staff Attorney

January 24, 2017



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CHRIS CHRISTIE  
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**FINAL DECISION**

**September 29, 2016 Government Records Council Meeting**

Annette L. Steinhardt  
Complainant

Complaint No. 2015-414

v.

Somerset County Prosecutor's Office  
Custodian of Record

At the September 29, 2016 public meeting, the Government Records Council ("Council") considered the August 23, 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 both requests were for exempt criminal investigatory records, the Custodian has borne his burden of proof that the denial of access was lawful pursuant to N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Brewer v. NJ Dep't of Law and Pub. Safety, GRC Complaint No. 2006-204 (October 2007) and Hwang v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-348 (January 2013). Further, the Custodian has certified that the requested contract is not in the files of the Prosecutor's Office. Moreover, there is no competent, credible evidence to refute the Custodian's certification that no responsive records exist. *See* Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 29<sup>th</sup> Day of September, 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: October 4, 2016**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
September 29, 2016 Council Meeting**

**Annette L. Steinhardt<sup>1</sup>  
Complainant**

**GRC Complaint No. 2015-414**

v.

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

**Records Relevant to Complaint:**

October 22, 2015 OPRA request:

1. "I need copies of evidence you have."
2. The "signed contract my Mother had on my home."

October 31, 2015 OPRA request: The records and evidence reviewed by the Somerset County Prosecutor's Office ("SCPO") regarding a Complaint filed on the New Jersey Division of Criminal Justice's ("NJ DCJ") Tipline and used by their office in their responsive letter dated October 2, 2015.

**Custodian of Record:** Thomas White

**Request Received by Custodian:** October 22, 2015 and November 2, 2015

**Response Made by Custodian:** October 27, 2015 and November 2, 2015

**GRC Complaint Received:** December 28, 2015

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

Request and Response:

On October 22, 2015, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian seeking the above-mentioned records. On October 27, 2015, the Custodian responded in writing, denying the request and citing the exemption for criminal investigatory records. Additionally, the Custodian denied the request because the agency has no "evidence," other than e-mails, text messages, and pictures previously provided by the

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

<sup>2</sup> Represented by Carol Taylor, Esq., Cooper, Cottell & Taylor, LLC, Somerset, NJ.

<sup>3</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Complainant to the Bernardsville Police Department. Finally, the Custodian did not possess a copy of the contract that the Complainant sought.

On October 31, 2015, the Complainant submitted a second OPRA request, which the Custodian received on November 2, 2015, seeking the above-mentioned records. On November 2, 2015, the Custodian responded in writing, denying the request for being overbroad and for seeking exempt criminal investigatory records.

#### Denial of Access Complaint:

On December 28, 2015, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserted that the Prosecutor’s Office, while investigating an allegation of malicious damage to her home, reviewed evidence and records relating to a Complaint she had filed in 2001 with the NJ DCJ’s Tipline (Complaint No. 200100258). She felt that she was entitled to know what evidence and records the Prosecutor’s office had considered. She also demanded a copy of a contract, signed by her mother, concerning a home that the Complainant owned, a copy of which the Prosecutor’s office had reviewed when considering criminal allegations. She attached a copy of a letter dated October 2, 2015, from the Captain of Detectives at the SCPO, which she argued proved that the SCPO did review the contract and records relating to the NJ DCJ’s Tipline Complaint.

#### Statement of Information:

On January 19, 2016, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s first OPRA request on October 22, 2015. The Custodian further certified that he conducted a search of the SCPO’s record management software system, which revealed an incident involving the Complainant. He also stated that after reviewing the material, he determined there was no “evidence” in the files received from the Bernardsville Police Department. He provided a list of items contained in the file, which contained preliminary arrest and screening reports, five investigation reports, a photocopy of four text messages, and the evidence that the Complainant had sent to the police department, including 103 pages of e-mails and photographs. He included copies of his detailed responses to the Complainant.

He certified that he replied to the October 22 request in writing and reiterated the reason for the denials. Regarding the October 22, 2015 request, Item No. 1, he stated he advised the Complainant that there was no “evidence” in their files other than records which the Complainant herself provided to the Police Department. Further, he stated all records requested were exempt criminal investigatory records. Citing Janeczko v. NJ Dep’t of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004)(other citations omitted). Finally he advised the Complainant that the alleged contract she described was not in the file.

Regarding the October 31, 2015 request, the Custodian denied the request, deeming it overbroad and citing to MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534 (App. Div.

2005)(other citations omitted). Moreover, the Custodian noted that police records and “evidence,” such as the Complainant suggests, are exempt from disclosure.

## 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:

While OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, *it 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.”* N.J.S.A. 47:1A-1.

MAG, 375 N.J. Super. at 546 (emphasis added).

The Court reasoned that:

Most significantly, the request failed to identify with any specificity or particularity the governmental records sought. *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 in the OAL litigation. 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 (emphasis added).

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 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>4</sup> NJ Builders Assoc. v. NJ 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).

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<sup>4</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).



The October 22, 2015 OPRA request is invalid on its face. By requesting “copies of evidence you have,” the Complainant failed to identify specific government records. Moreover, the Complainant requested the “signed contract my Mother had on my home,” which does not provide the Custodian with adequate identifiers to locate government records. MAG, 375 N.J. Super.

The status of records purported to fall under the criminal investigatory records exemption pursuant to N.J.S.A. 47:1A-1.1 was examined by the GRC in Janeczko, GRC 2002-79 and 2002-80. There, the complainant sought access to copies of records related to alleged criminal actions committed by her son, who was allegedly killed by police officers. The Council found that under OPRA, “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed” and are not accessible under N.J.S.A. 47:1A-1.1. Consequently, the complainant’s request was denied and the Council found no violation by the Custodian, stating: “[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete . . . and the Council does not have a basis to withhold from access only currently active investigations and release those where the matter is resolved or closed.”

Similarly, in Brewer v. NJ Dep’t of Law and Pub. Safety, GRC Complaint No. 2006-204 (October 2007), the complainant sought lab records in the custody of the State Police for use in an investigation. As the records were part of a criminal investigatory file, they were exempt from disclosure under OPRA. Accordingly, the Council determined the complainant’s request was lawfully denied. *See also* Scott v. Red Bank Police Dep’t (Monmouth), GRC Complaint No. 2011-244 (February 2013).

Further, in Hwang v. Bergen Cnty. Prosecutor’s Office, GRC Complaint No. 2011-348 (January 2013), the complainant requested all reports made for case number BCPO-1002349 regarding the September 20, 2010 arrest and incident report of Hwang and a codefendant. The complainant also requested all police logs for September 20, 2010. The custodian agreed to disclose the requested arrest report because it merely recorded the basic factual data for the arrest, which required only a 35 cents copy fee; however, he refused to disclose the “narrative” police logs, as they pertained to an open and ongoing criminal investigation. The complainant disagreed with the proposition that police reports constitute exempt criminal investigatory records. The complainant asserted that the case resulted in his arrest and has since been closed.

Relying on the holding in Janeczko, the GRC stated that:

[I]n the instant matter the Custodian has certified that Item No. 1 of the Complainant’s request constitutes criminal investigatory files. The Complainant has not provided any competent evidence to refute this certification. Therefore, because the requested law enforcement reports . . . constitute criminal investigatory files, the Custodian has borne his burden of proof that the denial of access was lawful pursuant to N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. [citations omitted].

Id.

Here, as occurred in Hwang, the Custodian certified that he reviewed five investigative reports concerning these charges, which were part of a criminal investigatory file. This fact is supported by the Complainant's affirmation that she sought investigatory records relating to criminal allegations involving her home. The Custodian correctly stated the records do not cease to be criminal investigative in nature simply because charges are not brought. Hwang, GRC 2011-348. The GRC is thus satisfied that the all records requested are exempt as criminal investigatory records.

Therefore, because the October 22, 2015 request was invalid as overly broad and both requests were for exempt criminal investigatory records, the Custodian has borne his burden of proof that the denial of access was lawful pursuant to N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko, GRC 2002-79 and GRC 2002-80; Brewer, GRC 2006-204, and Hwang, GRC 2011-348. Further, the Custodian has certified that the requested contract is not in the files of the Prosecutor's Office. Moreover, there is no competent, credible evidence to refute the Custodian's certification that no responsive records exist. See Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because both requests were for exempt criminal investigatory records, the Custodian has borne his burden of proof that the denial of access was lawful pursuant to N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Brewer v. NJ Dep't of Law and Pub. Safety, GRC Complaint No. 2006-204 (October 2007) and Hwang v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-348 (January 2013). Further, the Custodian has certified that the requested contract is not in the files of the Prosecutor's Office. Moreover, there is no competent, credible evidence to refute the Custodian's certification that no responsive records exist. See Pusterhofer v. NJ Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Ernest Bongiovanni  
Staff Attorney

August 23, 2016<sup>5</sup>

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<sup>5</sup> This complaint was prepared for adjudication at the Council's August 30, 2016 meeting; however, the complaint could not be adjudicated due to lack of a quorum.