



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
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PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

February 26, 2020 Government Records Council Meeting

Scott Madlinger
Complainant

Complaint No. 2018-103

v.

Berkeley Township Police Department (Ocean)
Custodian of Record

At the February 26, 2020 public meeting, the Government Records Council (“Council”) considered the February 19, 2020 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 unlawfully redacted the names, addresses, and dates of birth contained within the summonses provided in response to the Complainant’s May 26, 2018 OPRA request. N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus (Bergen), GRC Complaint No. 2003-110 (Interim Order dated June 29, 2004). However, the Council declines to order disclosure since the evidence in the record demonstrates that the Custodian disclosed the records to the Complainant without the disputed redactions on June 21, 2018.
2. The Custodian unlawfully redacted the summonses provided in response to the Complainant’s May 26, 2018 OPRA request. However, the Custodian cured the unlawful denial by disclosing revised summonses on June 21, 2018. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Final Decision Rendered by the
Government Records Council
On The 26th Day of February 2020

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: March 3, 2020



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
February 26, 2020 Council Meeting**

**Scott Madlinger¹
Complainant**

GRC Complaint No. 2018-103

v.

**Berkeley Township Police Department (Ocean)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies of: “[a]ll motor vehicle summons issued by officer id 5399 on 05/25/2018.”³

Custodian of Record: Sandra Brelsford

Request Received by Custodian: May 26, 2018

Response Made by Custodian: June 1, 2018; June 4, 2018

GRC Complaint Received: June 7, 2018

Background⁴

Request and Response:

On May 26, 2018, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On June 1, 2018, the Custodian responded in writing, providing a list of four (4) summonses issued by a Berkeley Township Police Department (“BPD”) officer on May 25, 2018. That same day, the Complainant replied to the Custodian via e-mail, requesting copies of the summonses themselves. The Custodian responded shortly after, stating that she did not have physical copies of the summonses, as they were taken by Traffic Safety and entered electronically. The Complainant replied to the Custodian, stating that he would like physical copies of the summonses. The Custodian responded, stating that she would forward the OPRA request to Dona Montenegro at Traffic Safety. The Custodian also stated that the summonses would be redacted pursuant to N.J.S.A. 47:1A-1.1. The Custodian also stated that Ms. Montenegro would not see the OPRA request until June 4, 2018, as the BPD’s offices were closed.

On June 4, 2018, Ms. Montenegro, on behalf of the Custodian, provided redacted copies

¹ No legal representation listed on record.

² Represented by Lauren Staiger, Esq., of Gilmore & Monahan, P.A. (Toms River, NJ).

³ The Complainant sought additional records that are not at issue in this complaint.

⁴ 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.

of the summonses to the Complainant.

On June 4, 2018, the Complainant e-mailed the BPD Chief of Police, stating that he had two (2) issues with Ms. Montenegro's response. The Complainant first stated that he wanted copies of the summonses but without redactions beyond driver's license numbers. The Complainant then stated that although he submitted his request anonymously, he was provided unredacted copies of the summons pertaining to himself.

Denial of Access Complaint:

On June 7, 2018, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that despite submitting his request anonymously, he was provided unredacted copies of the summons pertaining to himself. The Complainant also objected to the redactions made to the other summonses beyond driver's license numbers.

The Complainant contended that on June 5, 2018, he spoke with Ms. Montenegro about the issue and claimed that she told him she would contact him the next day. The Complainant asserted that he never heard back from Ms. Montenegro.

Statement of Information:

On June 21, 2018, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on May 26, 2018. The Custodian certified that she responded in writing on June 1, 2018, providing a list of summonses issued by specified officer on May 25, 2018.

The Custodian asserted that when the Complainant was not satisfied by the response, she told him that Ms. Montenegro would provide redacted copies of the summonses. The Custodian then contended that when the Complainant objected to the copies provided on June 4, 2018, she spoke with the Township Attorney. The Custodian stated that she was told that she could provide the summonses unredacted apart from driver's license numbers. The Custodian certified that she provided the Complainant with the unredacted copies of the summonses on June 21, 2018.

Additional Submissions

On January 24, 2020, the GRC requested additional information from the Custodian. Specifically, the GRC stated:

1. Please provide copies of your responses to the Complainant's request dated June 1, 2018, June 4, 2018, and June 21, 2018.
2. Please provide copies of the records provided to the Complainant on June 1, 2018, June 4, 2018, and June 21, 2018.

On January 29, 2020, the Custodian responded to the GRC. The Custodian provided copies of the e-mail responses dated June 1, 2018, June 4, 2018, and June 21, 2018. The Custodian also

provided copies of the responsive records sent to the Complainant on each of the aforementioned dates.

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.

In Merino v. Borough of Ho-Ho-Kus (Bergen), GRC Complaint No. 2003-110 (Interim Order dated June 29, 2004), the complainant requested among other records, copies of moving violations issued by a specific police officer. In response, the custodian provided copies of the moving violations, but with redactions made to the addresses contained within. The Council held that, notwithstanding the “potential harm of unsolicited contact and emotional strain” to those identified, the custodian should have allowed public access to the addresses. Id. However, in Perino v. Borough of Haddon Heights (Camden), GRC Complaint No. 2004-128 (November 2004), the complainant requested a police call sheet dated May 23, 2004 regarding a noise complaint at the complainant’s residence. The custodian asserted in the SOI that this record could be released only after the name, address and telephone number of the individual who made the noise complaint was redacted. The Council held that, “disclosure of the citizen’s name, address and phone number could result in unsolicited contact and confrontation between the citizen and the complainant.” Id. The Council therefore found that the individual’s name, address and phone number should remain redacted.

Regarding the Complainant’s contention regarding redactions here, the summonses he initially received contained redactions apart from those summonses pertaining to himself. Specifically, the Custodian initially redacted the names, addresses, and dates of birth contained in the provided summonses, except for his summons. The Complainant expressed his objection to the BPD Chief of Police, and asked for revised copies of the summonses, redacting only driver’s license numbers. However, before the Township could respond, the Complainant filed his complaint. Thus, the redactions contained in the summonses were expressly at issue upon the filing of this complaint.

The Custodian certified in the SOI that the Township Attorney advised that she could provide the summonses unredacted except for driver’s license numbers. The Custodian then certified that she provided the Complainant with the revised summonses on June 21, 2018. In response to the GRC’s additional information request, the Custodian attached a copy of the June 21, 2018 e-mail as well as copies of the responsive records.

The facts here more closely match those in Merino, as the Complainant sought violations issued by an officer who issued a violation to him. Whereas the complainant in Perino sought the identity of a private citizen who filed a complaint against him, thus substantially increasing the

chance of direct confrontation, the Complainant's request is specific only to those who received summonses from the same public official. Moreover, the custodian in Merino did not redact the names or dates of birth contained within the violations, whereas the Custodian here redacted nearly all identifying information.

Therefore, the Custodian unlawfully redacted the names, addresses, and dates of birth contained within the summonses provided in response to the Complainant's May 26, 2018 OPRA request. N.J.S.A. 47:1A-6; Merino, GRC 2003-110. However, the Council declines to order disclosure since the evidence in the record demonstrates that the Custodian disclosed the records to the Complainant without the disputed redactions on June 21, 2018.

The GRC also acknowledges the Complainant's objection to the disclosure of summons issued to him without the disputed redactions. However, the GRC only has the authority to adjudicate matters pertaining to an unlawful denial of access to records and cannot speak to claims of and unlawful or improper disclosure of records. N.J.S.A. 47:1A-7(b).

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 Custodian unlawfully redacted the summonses provided in response to the Complainant's May 26, 2018 OPRA request. However, the Custodian cured the unlawful denial by disclosing revised summonses on June 21, 2018. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, the Custodian's actions do not rise to the level of a

knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian unlawfully redacted the names, addresses, and dates of birth contained within the summonses provided in response to the Complainant's May 26, 2018 OPRA request. N.J.S.A. 47:1A-6; Merino v. Borough of Ho-Ho-Kus (Bergen), GRC Complaint No. 2003-110 (Interim Order dated June 29, 2004). However, the Council declines to order disclosure since the evidence in the record demonstrates that the Custodian disclosed the records to the Complainant without the disputed redactions on June 21, 2018.
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Prepared By: Samuel A. Rosado
Staff Attorney

February 19, 2020