



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

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

**FINAL DECISION**

**June 27, 2023 Government Records Council Meeting**

Alec Ferretti  
Complainant

Complaint No. 2021-127

v.

NJ Department of Health  
Custodian of Record

At the June 27, 2023 public meeting, the Government Records Council (“Council”) considered the June 20, 2023 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 Custodian lawfully denied access to Mr. Arrisi’s Outlook calendar. N.J.S.A. 47:1A-6. Specifically, Mr. Arrisi’s calendar, which is comprised of internal information only, fall under the executive privilege given to such information pursuant to N.J.S.A. 47:1A-9(b). See Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205 (2005); McDonald v. City of Jersey City, GRC Complaint No. 2015-274 (January 2017).

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 27<sup>th</sup> Day of June 2023

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: June 29, 2023**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
June 27, 2023 Council Meeting**

**Alec Ferretti<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-127**

v.

**N.J. Department of Health<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of Vincent T. Arrisi’s Outlook calendars from January 1, 2017 to present.

**Custodian of Record:** Darrin Goldman  
**Request Received by Custodian:** April 15, 2021  
**Response Made by Custodian:** April 26, 2021  
**GRC Complaint Received:** June 21, 2021

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

**Request and Response:**

On April 15, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On April 26, 2021, the Custodian responded in writing stating that he was extending the response time frame through May 12, 2021. On May 12, 2021, the Custodian responded in writing extending the response time frame through May 26, 2021. On May 26, 2021, the Custodian responded in writing extending the response time frame through June 9, 2021.

On June 2, 2021, the Custodian responded in writing denying the subject OPRA request and stating that private meeting schedules of State employees are exempt from disclosure. Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 217-218 (2005); N. Jersey Newspapers, Co. v. Passaic Cnty. Bd. of Chosen Freeholders, 127 N.J. 9, 17 (1992); Shearn v. Office of the Governor, GRC Complaint No. 2003-53 (February 2004).

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

<sup>2</sup> Represented by Deputy Attorney General (“DAG”) Stephen Slocum. Previously represented by DAG Jeanette M. Barnard and DAG Jessica A. Sampoli.

<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.

### Denial of Access Complaint:

On June 21, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant disputed the Custodian’s denial of access to the requested calendars but did not provide any additional arguments supporting his position.

### Statement of Information:

On July 12, 2021, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that he received the Complainant’s OPRA request on April 15, 2021. The Custodian certified that following three (3) extensions of time, he responded in writing on June 2, 2021 denying access to the subject OPRA request citing Gannett, 379 N.J. Super. 205; N. Jersey Newspapers, 127 N.J. 9; Shearn, GRC 2003-53.

The Custodian argued that it is well established that non-public calendars of government officials were exempt from access under both the old Right to Know Law and OPRA. The Custodian asserted that the purpose of this exemption was to protect the privacy of officials and the persons with whom they met. N. Jersey Newspapers, 127 N.J. at 17-20. The Custodian argued that the Gannett court relied on N. Jersey Newspapers in determining that a county counsel’s appointment book was not subject to disclosure under OPRA and the GRC held similarly in Shearn, GRC 2003-53.

The Custodian argued that here, the Complainant sought more than three (3) years of calendars from Mr. Arrisi, who is the New Jersey State Registrar of Vital Statistics. The Custodian argued that the requested calendars were not published and thus remain private and exempt from access under OPRA.

### Additional Submissions:

On May 12, 2023, the GRC sought additional information from the Custodian. The GRC noted that the evidence and arguments presented are not clear on whether Mr. Arrisi’s calendar contained solely internal information, public-facing information, or a combination of both. The GRC thus requested that the Custodian respond to the following:

1. Did Mr. Arrisi’s Outlook calendars comprise of internal information, public information, or a combination of both?

The GRC requested that the Custodian provide his legal certification by close of business on May 17, 2023.

On May 17, 2023, the Custodian e-mailed the GRC seeking a one-week extension to respond to the request for additional information. On May 19, 2023, Custodian’s Counsel responded to the request for additional information. Therein, Counsel noted that in the SOI, the Custodian stated that the New Jersey Department of Health (“DOH”) “does not publish a public

calendar for Mr. Arrisi.” Custodian’s Counsel further certified that to answer the GRC’s question directly: “Mr. Arrisi’s Outlook calendar was comprised of internal information only.”

### Analysis

#### Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

OPRA provides that “[t]he provisions of [OPRA] shall not abrogate any . . . grant of confidentiality heretofore established or recognized by . . . judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.” N.J.S.A. 47:1A-9(b).

In Gannett, the Appellate Division extended the privilege afforded to telephone billing records to the non-public calendar of County Counsel. Id. at 217-18. In reaching this conclusion, the Court looked to N. Jersey Newspapers, 127 N.J. at 17, where the New Jersey Supreme Court held that telephone billing records were exempt from disclosure under the Right to Know Law (OPRA’s predecessor):

[T]here may be times—and they may be the most critical times—when a government official will have to make a telephone call that has an arguable claim to confidentiality—times when, for example, a mayor might need to call a city council member from an opposing political party on a most highly sensitive community issue to enlist that person’s support; or times when a mayor might need to call a community activist to calm troubled waters, without causing disruption that might result from appearing to negotiate with a dissident who may, at the moment, be perceived as a lawbreaker.

[Id. at 216 (*quoting* N. Jersey Newspapers, at 16-18).]

The Court held that N. Jersey Newspapers constituted “‘judicial case law’ that ‘established or recognized’ the ‘confidentiality’ of telephone billing records before enactment of OPRA within the intent of N.J.S.A. 47:1A-9(b).” Id. at 217. Based on the foregoing, the Gannett Court concluded that it was appropriate to extend the rationale of N. Jersey Newspapers to a County Counsel’s calendar because:

[a]lthough County Counsel’s appointment book does not contain telephone numbers, it reveals the identity of persons with whom County Counsel planned to meet and the purpose of the meetings. Such information implicates privacy interests of persons who meet with public officials similar to the identity of persons who call and are called by public officials. Consequently, we conclude that the rationale of

[N. Jersey Newspapers] extends to the information contained in County Counsel's appointment book.

[Id. at 217-218.]

The Council subsequently applied Gannett to those portions of calendars containing private meeting schedules or personal information. This application has resulted in differing Council decisions based on the content of the calendars at issue therein.

For example, in McDonald v. City of Jersey City, GRC Complaint No. 2015-274 (January 2017), the complainant sought the mayor's calendar for a given year. When provided a public calendar, the complainant stated that the calendar did not contain "private meetings" or similar events. The custodian asserted that that release of the mayor's private calendar would run afoul of the privacy expectations of those individuals and of the mayor, citing Gannett, 379 N.J. Super. 205. The Council ordered an *in camera* review consistent with its prior decisions in Russomano v. Twp. of Edison (Middlesex), GRC Complaint No. 2013-74 (December 2013) and Smith v. N.J. Dep't of Corr., GRC Complaint No. 2005-84 (Interim Order dated November 15, 2006). However, after further review, the Council reconsidered its decision and agreed with the custodian in holding that a mayor's private calendar is exempt from access to protect the privacy interests of private citizens communicating with the mayor. The Council also held that the same grant of privilege recognized in Gannett applied to the mayor's private calendar. N.J.S.A. 47:1A-(9)(b); *see also* New York Pub. Radio v. Office of the Governor, Docket No. MER-L-1345-14 (December 5, 2014) (Oral Opinion), *app'd on other grounds*, 2016 N.J. Super. Unpub. LEXIS 1612 (App. Div. 2016).

However, in Percella v. City of Bayonne (Hudson), GRC Complaint No. 2017-210 (September 2019), the custodian disclosed copies of the mayor's calendar, which contained a mixture of public and private meeting information, with redactions for private citizen names and meeting dates. The complainant disputed the redactions and the custodian maintained that the applied redactions were consistent with OPRA's privacy exemption. N.J.S.A. 47:1A-1. The Council, invoking its *sua sponte* right to affirm a denial on bases not raised by a custodian, held that the custodian lawfully denied access to redacted portions of citizen meeting entries on the mayor's calendar citing Gannett, 379 N.J. Super. 205 and McDonald, GRC 2015-274.

In the current matter, the Complainant sought access to Mr. Arrisi's Outlook calendars from January 1, 2017 to present. The Custodian responded denying access to the subject OPRA request citing Gannett, 379 N.J. Super. 205; N. Jersey Newspapers, 127 N.J. 9; and Shearn, GRC 2003-53. This complaint followed wherein the Complainant disputed the blanket denial. In the SOI, the Custodian maintained his position that he lawfully denied access to the requested calendar based on prevailing case law. Specifically, the Custodian certified that DOH "does not publish a public calendar for Mr. Arrisi." The GRC sought additional information because the Custodian's certified statement did not clearly indicate the total contents of the responsive Outlook calendar. In response, Custodian's Counsel certified that Mr. Arrisi's calendars comprised of only internal information.

Upon review of the parties' submissions here, the GRC is persuaded that the facts are comparable to Gannett and McDonald for two reasons. First, the executive privilege has been

considered “categorical” and applied to public official calendars at all levels from municipal mayors through the Governor. McDonald, GRC 2015-274 at 4 (citing N. Jersey Newspapers, 127 N.J. 9). Here, Mr. Arrisi, the State Registrar for the Office of Vital Statistics within DOH, is responsible for supervision of all vital records and registrars in within the State. N.J.S.A. 26:8-24. Thus, it is reasonable to conclude that the confidentiality set forth in prevailing case law would apply to Mr. Arrisi’s calendar. Second, Custodian’s Counsel has certified that Mr. Arrisi’s calendar does not contain any public information. Thus, the facts of this complaint are comparable to McDonald because the calendar in question is comprised of internal information only and distinguishable from Percella because no public events subjecting the calendar to redaction and disclosure were included therein. Therefore, the evidence of record supports that Mr. Arrisi’s private Outlook calendar is exempt from disclosure in accordance with the privilege outlined in Gannett, 379 N.J. Super. 205 and McDonald, GRC 2015-274

Accordingly, the Custodian lawfully denied access to Mr. Arrisi’s Outlook calendar. N.J.S.A. 47:1A-6. Specifically, Mr. Arrisi’s calendar, which is comprised of internal information only, fall under the executive privilege given to such information pursuant to N.J.S.A. 47:1A-9(b). See Gannett, 379 N.J. Super. 205; McDonald, GRC 2015-274.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to Mr. Arrisi’s Outlook calendar. N.J.S.A. 47:1A-6. Specifically, Mr. Arrisi’s calendar, which is comprised of internal information only, fall under the executive privilege given to such information pursuant to N.J.S.A. 47:1A-9(b). See Gannett N.J. Partners, LP v. Cnty. of Middlesex, 379 N.J. Super. 205 (2005); McDonald v. City of Jersey City, GRC Complaint No. 2015-274 (January 2017).

Prepared By: Frank F. Caruso  
Executive Director

June 20, 2023