



## State of New Jersey

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

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lieutenant Governor*

KIMBERLY K. HOLMES  
*Acting Commissioner*

### FINAL DECISION

#### August 29, 2023 Government Records Council Meeting

Ronald Brown  
Complainant

Complaint No. 2021-290

v.

East Brunswick Police Department (Middlesex)  
Custodian of Record

At the August 29, 2023 public meeting, the Government Records Council (“Council”) considered the August 22, 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:

1. The Custodian’s response was insufficient because she failed to respond in writing to each request item contained in the request individually; to wit, she inserted the wrong OPRA request as the request to which she was responding. 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 Complainant’s September 16, 2021 request is invalid because it failed to identify a specific government record and required research. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Dep’t, 381 N.J. Super. 30 (App. Div. 2005), and N.J. Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015). See also Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013). Thus, the Custodian lawfully denied the Complainant’s request. N.J.S.A. 47:1A-6.

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 August 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: September 5, 2023**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
August 29, 2023 Council Meeting**

**Ronald Brown<sup>1</sup>  
Complainant**

**GRC Complaint No. 2021-290**

v.

**East Brunswick Police Department (Middlesex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies via e-mail of the following:

“In relationship to Complaint Case #1204 S 2020 (000469), (000467), (000468), (000470) . . . [a]ny and all documents/documentation showing that any judge of the East Brunswick Municipal Court requested, or ordered any investigation, or victim’s protections in accordance with New Jersey domestic violence law 2C:25-28 (e), (f), (g), (h), (i). Complaint Case #1204 S 2020 000469 regarding C. McCain is dated 9/4/2020, #1204 S 2020 000467 regarding C. Hood is dated 9/3/2020, #1204 S 2020 000468 regarding E. McCain is dated 9/4/2020, #1204 S 2020 000470 regarding M. Hood is dated 9/4/2020 and apparently no usual actions or notifications have taken place in regards to the victim or perpetrators. Complainant needs verification that New Jersey domestic violence law has been followed or ignored/obstructed.”

**Custodian of Record:** Tamar Lawful<sup>3</sup>

**Request Received by Custodian:** September 16, 2021

**Responses Made by Custodian:** September 27, 2021 and October 4, 2021

**GRC Complaint Received:** November 15, 2021

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

**Request and Responses:**

On September 16, 2021, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On September 27, 2021,

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

<sup>2</sup> Represented by Anthony C. Iacocca, Esq., of Hoagland, Longo, Moran, Dunst & Doukas, LLP (New Brunswick, NJ).

<sup>3</sup> Tamar Lawful is the present custodian of records. However, the custodian of records during preparation of the response to the OPRA request and Statement of Information was Nennette Perry. Because Ms. Perry interacted with the GRC staff as the custodian of records during the course of this complaint, she is referred to as the “Custodian” herein.

<sup>4</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

the seventh (7<sup>th</sup>) business day following receipt of said request, the Custodian responded in writing informing the Complainant that an extension of time was required until October 4, 2021. On October 4, 2021, the Custodian responded to the Complainant's request, informing him that the request was denied as overly broad, not sufficiently clear, and would require research.

#### Denial of Access Complaint:

On November 15, 2021, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant stated that he filed his request on September 16, 2021, and that the Custodian responded on October 4, 2021, denying the request "in blanket fashion, citing no specific, actually applicable statute or law." The Complainant further stated that the Custodian has violated OPRA and is "an 'Accessory After The Fact (sic) in violation of Federal Law (sic)[.]"<sup>5</sup>

#### Statement of Information:

On November 24, 2021, the Custodian filed a Statement of Information ("SOI"). The Custodian certified that she received the Complainant's OPRA request on September 16, 2021. The Custodian certified that she responded on September 27, 2021, notifying the Complainant that an extension of time would be needed until October 4, 2021. The Custodian certified that on October 4, 2021, she again responded to the Complainant's request, informing the Complainant that the request was overly broad and lacked the specificity of a valid OPRA request. In support of the denial, the Custodian cited MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005), and N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007).

#### Additional Submissions:

On July 11, 2023, the GRC e-mailed the Custodian's Counsel a request for additional information. The GRC informed Counsel that the content of the Custodian's response did not mirror the request contained on the OPRA request form and, as such, it appeared that the Custodian responded to a different OPRA request. The GRC asked Counsel to have the Custodian submit to the GRC the response to the request which formed the basis of the instant complaint.

On July 14, 2023, the Custodian's Counsel forwarded a letter and certification to the GRC. In the letter, Counsel explained that the Complainant submitted the OPRA request which formed the basis of the complaint via an e-mail dated September 16, 2021. Counsel stated that within the e-mail the Complainant included language that was not related to the OPRA request. Counsel further stated that in the response the Custodian included the language contained in the Complainant's e-mail instead of the language contained in the OPRA request form.

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<sup>5</sup> The Complainant cited several provisions of the United States Code in support of his lengthy argument that the Custodian is/was a participant in a criminal conspiracy under federal law. The Complainant also attached to the complaint several copies of purported partial discovery requests. However, none of the allegations and/or attachments are relevant to the adjudication of this complaint, which will address only the OPRA issue. N.J.S.A. 47:1A-7(b).

In the certification, Counsel certified that the Custodian retired and therefore could not reply to the GRC; however, because he had firsthand knowledge of the matter, he was replying in the Custodian's stead. Counsel further certified that he personally reviewed the Complainant's September 16, 2021 OPRA request, assisted the Custodian in drafting an October 4, 2021 response to the request, and affirms that said response was responsive to the OPRA request.

## 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), 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 September 16, 2021 request by reciting the Complainant's OPRA request as the request to which the Custodian was responding. However, the Custodian mistakenly recited language contained in the forwarding e-mail, rather than the request as set forth on the OPRA request form. As such, by failing to recite the correct request, *a fortiori*, the Custodian failed to respond to each request item individually.

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

### Validity of Request

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).]

Further, in Bent, 381 N.J. Super. 30,<sup>6</sup> the Superior Court references MAG in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records accessible. “As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents.” Id. at 37.<sup>7</sup>

Moreover, in N.J. Builders Ass’n, 390 N.J. Super. 166, the court cited MAG by stating that “. . . when a request is ‘complex’ because it fails to specifically identify the documents sought, then that request is not ‘encompassed’ by OPRA . . .” Id. at 180.

With respect to requests requiring research, the distinction between search and research is fact sensitive. That is, there are instances where the very specificity of a request requires only a search. As the Council determined in Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013), “. . . a valid OPRA request requires a search, not research . . . what will be sufficient to determine a proper search will depend on how detailed the OPRA request is, and will differ on a case-by-case basis. What a custodian is not required to do, however, is to actually read through numerous [records] to determine if same is responsive: in other words, conduct research.”

Additionally, in Lagerkvist v. Office of the Governor, 443 N.J. Super. 230, 236-237 (App. Div. 2015), the court held that plaintiff’s request was invalid because it required research. In reaching this conclusion, the court reasoned that:

The custodian in this case would have had to make a preliminary determination as to which travel records correlated to the governor and to his senior officials, past and present, over a span of years. The custodian would then have had to attempt to single out those which were third-party funded events. Next, he would have had to collect all documents corresponding to those events and search to ensure he had accumulated everything, including both paper and electronic correspondence. OPRA does not convert a custodian into a researcher.

[Id. at 237.]

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<sup>6</sup> Bent v. Stafford Police Dep’t, GRC Complaint No. 2004-78 (October 2004) affirmed on appeal.

<sup>7</sup> As stated in Bent, *supra*.

Here, the Complainant's request fails to identify any *specific* records. Rather, the Complainant's request sought "any and all" documents and/or documentation "showing" that any judge of the municipality's court requested any investigation, or ordered any investigation, or ordered any victim protections pursuant to five (5) subsections of N.J.S.A. 2C:25-28 for each of four (4) different complaints. Such a request obviously requires research that the Custodian was not required to undertake.

Accordingly, the Complainant's September 16, 2021 request is invalid because it failed to identify a specific government record and required research. MAG, 375 N.J. Super. at 534; Bent, 381 N.J. Super. 30; N.J. Builders Ass'n, 390 N.J. Super. 166; Lagerkvist, 443 N.J. Super. 230. See also Verry, GRC 2013-43 and 2013-53. Thus, the Custodian lawfully denied the Complainant's request. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian's response was insufficient because she failed to respond in writing to each request item contained in the request individually; to wit, she inserted the wrong OPRA request as the request to which she was responding. 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 Complainant's September 16, 2021 request is invalid because it failed to identify a specific government record and required research. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005), and N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166 (App. Div. 2007); Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015). See also Verry v. Borough of S. Bound Brook (Somerset), GRC Complaint Nos. 2013-43 and 2013-53 (Interim Order dated September 24, 2013). Thus, the Custodian lawfully denied the Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: John E. Stewart

August 22, 2023