Useful OPRA Cases by Subject

Note: This is NOT an exhaustive list of cases or subject areas. Information contained herein is not intended, nor should be construed, as legal advice. Please consult appropriate legal counsel.

911 Tapes

Serrano v. South Brunswick Twp., 358 N.J. Super. 352 (App. Div. 2003): The complainant requested an audiotape of a 911 call in which a defendant allegedly killed his father three hours after he had placed the call. On appeal from the GRC (GRC Complaint No. 2002-33), the court affirmed the Council's decision to release the tape.

1. 911 calls are required by law to be recorded by a government agency and these tapes must be retained for "no less than 31 days." (See N.J.S.A. 52:17C-1 and N.J.A.C. 17:24-2.4).
2. 911 tapes come within the definition of a government record for the purposes of OPRA.
3. The Court noted:
    a. This case does not provide the opportunity for a definitive ruling on the question of whether 911 tapes are public records under OPRA.
    b. The 911 caller himself made the existence of the call part of the public record in the pretrial proceedings of his criminal case and had expressly taken the position in these proceedings that he did not object to the release of the 911 tape. The court is not concluding that all 911 tapes are open to the public under OPRA. They decided that only under the circumstances of this case the prosecutor was not entitled to withhold this 911 tape from the public.

Ponce v. Town of West New York, 2013 N.J. Super. Unpub. LEXIS 436 (App. Div. 2013): Defendants appealed from a trial court's ruling granting plaintiff's application to review an unredacted recording of a 911 call reporting an alleged illegal parking violation. The recording reveals the identity of the caller who complained that plaintiff's car was blocking his driveway. The trial court conducted a balancing test using the seven (7) factors discussed in Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009) and determined that the caller's ostensible expectation of privacy in this context is subordinate to the public's right to access and review a "government record," as defined under OPRA. The Appellate Division affirmed, holding that ordinarily a citizen's identity when making a Title 39 complaint is easily accessible to the public as part of the official police record and that the recording does not reveal any personal or private information. Further, the Court held that defendants' fear concerning plaintiff's likelihood of retaliation is based on mere speculation: "[d]efendants have not presented any evidence of past hostility between these two individuals. Absent compelling reasons, which are conspicuously absent in this record, few can argue that in a free society an accused is not entitled to know the identity of his accuser." Id. at 9-10.

Advisory, Consultative or Deliberative ("ACD") Material

Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274 (2009): The Court held that "a record, which contains or involves factual components, is entitled to deliberative-process protection when it was used in the decision-making process and its disclosure would reveal deliberations that occurred during that process." Id. at 280.

Ciesla v. N.J. Dep't of Health & Senior Serv., et als, 429 N.J. Super. 127 (App. Div. 2012): The Court affirmed the GRC's decision (GRC Complaint No. 2010-38) that the responsive staff recommendation report constituted ACD material because it was a draft document.

Eastwood v. Borough of Englewood Cliffs (Bergen), GRC Complaint No. 2012-121 (June 2013): The Council held that conceptual drawings constituted ACD material even though they were shown to members of the public during a special meeting. The Council reasoned that the ACD exemption "is not akin to a privilege that can be waived through voluntary disclosure to the public similar to the attorney-client privilege exemption. ACD material is a description, not a privilege." Id. at 4. See also Held v. N.J. Dep't of Transportation, GRC Complaint No. 2013-142 (November 2013).

Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83 (App. Div.), certif. denied 233 N.J. 484 (2018): The Appellate Division affirmed that trial court's decision finding that the GRC lawfully denied access to draft meeting minutes. The court concluded that "the inherent nature of a draft document as both advisory and requiring deliberation prior to approval, compels the conclusion that draft minutes are '[ACD] material,' and are not subject to disclosure under OPRA as a *government* record. See N.J.S.A. 47:1A-1.1." Id. at 92 (emphasis in original).

Auto Accident Reports

Donato v. Jersey City Police Dep't, GRC Complaint No. 2005-251 (Interim Order dated December 19, 2005): The custodian charged $5.00 per accident report. The Council ruled that N.J.S.A. 39:4-131 states that auto accident reports are not privileged or confidential and that if the request is not made in person, the custodian may charge up to $5.00 for each of the first three pages and $1.00 per page thereafter in addition to the OPRA copy rates.[1]

Truland v. Borough of Madison, GRC Complaint No. 2006-88 (September 2007): The custodian charged $5.00 for each of the seven (7) reports plus OPRA's per page copy fee. The Council held that the custodian lawfully charged the complainant $40.25 for the requested accident reports pursuant to N.J.S.A. 39:4-131. Further, the Council held that no redactions were warranted on said reports.

Broad and/or Unclear Requests

MAG Entm't, LLC v. Div. of Alcohol Beverage Control, 375 N.J. Super. 534 (App. Div. 2005): The Court held that "[w]hile 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.*" (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).

[1] The GRC notes that N.J.S.A. 39:4-131 was amended on November 9, 2010, to remove the additional $1.00 charge for each page. See GRC's "OPRA Alert" Volume 3, Issue 2 (November 2010).

Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005): The Court affirmed the GRC's decision (GRC Complaint No. 2004-78) that the complainant's request was broad and unclear ("any and all"). The Council ruled that the information sought did not amount to an identifiable government record.

N.J. Builders Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007): Plaintiff submitted a 5-page document listing 38 separate requests, all of which included a request for "any and all documents and data used or considered . . . supporting, demonstrating, justifying or verifying" various determinations relevant to COAH's determinations about fair-share housing obligations. The Court held that Plaintiff did not specifically identify the records sought, as required by N.J.S.A. 47:1A-5(f), and OPRA did not require the custodian to produce the records within seven (7) business days pursuant to N.J.S.A. 47:1A-5(i).

Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (Interim Order dated December 19, 2007): The Council held that "[b]ecause the Complainant's OPRA requests #2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and Bent v. Stafford Police Dep't, 381 N.J. Super. 30 (App. Div. 2005)." Id. at 9.

Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010): The Council held that "an OPRA request for an e-mail or e-mails shall therefore focus upon the following four (4) characteristics:

- Content and/or subject
- Specific date or range of dates
- Sender
- Recipient

In accord with MAG, *supra*, and its progeny, in order to specifically identify an e-mail, OPRA requests must contain: (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof." Id. at 5. See also Armenti v. Robbinsville Bd. of Educ. (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011) (applying the Elcavage, factors to other forms of written correspondence).

Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010): The Court 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 (emphasis added). Upon review, the Court determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained and was therefore not overly broad. Id. at 515-16.

Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012): The Court reversed the trial court's decision by holding that Plaintiff's request for "EZ Pass benefits afforded to retirees of the Port Authority, including all . . . correspondence between the Office of the Governor . . . and the Port Authority . . ." was valid under OPRA because it "was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information . . . [and] was limited

to particularized identifiable government records, namely, correspondence with another government entity, rather than information generally." Id. at 176. The Court noted that Plaintiff had "narrowed the scope of the inquiry to a discrete and limited subject matter," and that fulfilling the request would involve "no research or analysis, but only a search for, and production of," identifiable government records. The Court reasoned that "the fact that the custodian of records in this case actually performed a search and was able to locate and identify records responsive to plaintiff's request belies any assertion that the request was lacking in specificity or was overbroad." Id. at 177.

Lagerkvist v. Office of the Governor, 443 N.J. Super. 230 (App. Div. 2015): Here, the court held that Defendant's statement that the otherwise invalid request was "unclear" was adequate when paired with applicable case law. Further, the court reasoned that the Plaintiff's request:

> [W]ould 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,
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> [Id. at 237.]

The court finally held that Defendant was under no obligation to accomplish a "reasonable solution" when a request is invalid because it is overly broad. The court disagreed with Plaintiff's argument that the "substantial disruption" portion of OPRA at N.J.S.A. 47:1A-5(g) required custodians to attempt to reach a reasonable accommodation when responding to an overly broad request.

Building Plans

Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2007-319 (July 2008): The complainant sought access to floor plans for the new municipal complex. The Council held that, "[t]he requested floor plans are exempt from disclosure for containing security information or procedures for any building facility which, if disclosed, would jeopardize security of the building or facility or persons therein pursuant to N.J.S.A. 47:1A-1.1." Id. at 9 (citing Cardillo v. City of Hoboken Zoning Office, GRC Complaint No. 2005-158 (December 2006)).

Nase v. Twp. of Middle (Cape May), GRC Complaint No. 2016-273 (July 2018): The complainant sought access to building plans for a home in the Township to which the custodian denied access under the security exemption. N.J.S.A. 47:1A-1.1. The Council agreed, holding that the building plans were exempt from disclosure for the reasons cited by the custodian.

Clarification

Moore v. Twp. of Old Bridge, GRC Complaint No. 2005-80 (August 2005): The custodian responded to the complainant's OPRA request by seeking clarification because she believed the request was overly broad. However, the complainant did not respond to the custodian's for clarification. The Council concluded that the custodian did not unlawfully deny access because

she reasonably sought clarification of the request and the complainant failed to provide same (citing Liebel v. Manalapan Englishtown Reg'l Bd. of Educ., GRC Complaint No. 2004-51 (September 2004)). See also Herron v. N.J. Dep't of Educ., GRC Complaint No. 2011-364 (December 2012).

Carter v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2011-100 (Interim Order dated June 26, 2012): Here, the Council held that "should a requestor amend or clarify an OPRA request, it is reasonable that the [response] time frame . . . should begin anew." Id. at 6 (citing N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i)). The Council subsequently found that the Custodian's failure to respond within the new seven (7) business day time frame resulted in a "deemed" denial of access.

Commercial Use of Government Records

Spaulding v. Cnty. of Passaic, GRC Complaint No. 2004-199 (September 2006): The Council held that "there is no restriction against commercial use under OPRA and it is not the province of the GRC to rule on this public policy aspect." See also McBride v. Twp. of Bordentown (Burlington), GRC Complaint No. 2007-217 (Interim Order dated October 29, 2008).

Copy Cost

O'Shea v. Pine Hill Bd. of Educ. (Camden), GRC Complaint No. 2007-192 (February 2009): The custodian proposed a charge of $10.00 to disclose an audio recording of a public meeting to the complainant. The complainant filed a Denial of Access Complaint, disputing that the charge represented the "actual cost" to provide the recording. During the pendency of the complaint, the custodian provided the GRC a quote from an outside vendor for $10.48 and certified that the custodial agency did not have the capability to duplicate the audiotape. The Council held that $10.48 was reasonable and warranted, reasoning that "evidence of record indicates that the Board does not have the resources to duplicate the requested record itself and must therefore contract with an outside vendor to do so." Id. at 9.

Livecchia v. Borough of Mt. Arlington (Morris), GRC Complaint No. 2008-80 (April 2010): The Council held that "[i]t is reasonable for a custodian to charge a requestor the actual postage cost associated with delivering records by mail. The Custodian in the matter before the Council must charge *actual* postage cost, not the anticipated postage cost associated with delivery by mail of the requested records."

Paff v. Twp. of Teaneck (Bergen), GRC Complaint No. 2010-09 (Interim Order dated May 24, 2011): The Council held that "[a]lthough the actual cost of providing records electronically is likely $0.00 pursuant to [Paff v. Gloucester City (Camden), GRC Complaint No. 2009-102 (Interim Order dated April 8, 2010)], because the Custodian had to make copies to redact the requested minutes prior to providing same electronically, the Custodian's charge of $6.00 represents the actual cost to provide the records to the Complainant pursuant to N.J.S.A. 47:1A-5(b)." Id. at 17.

Reid v. N.J. Dep't of Corrections, GRC Complaint No. 2010-83 (Final Decision dated May 24, 2011): The Council held that, "[b]ased on the court's holding in [In re Adoption of a Child by M.W., 116 N.J. Super. 506 (App. Div. 1971)], R. 1:13-2(a) contains no language relieving the Complainant from paying the appropriate copying costs because he is indigent. Thus, the Complainant must pay the proposed copy cost of $32.25 in order to receive the records at issue in

this complaint." Id. at 10. The Council's decision was later affirmed on appeal. Reid v. GRC & N.J. Dep't of Corrections, 2013 N.J. Super. Unpub. LEXIS 2625 (App. Div. 2013).

Copyright

Grauer v. N.J. Dep't of Treasury, GRC Complaint No. 2007-03 (November 2007): The Council held that "[b]ased on the court's holding in Bd. of Chosen Freeholders of Burlington Cnty. v. Robert Bradley Tombs, 215 Fed. Appx 80 (3d Cir. NJ 2006) and the GRC's decision in Albrecht v. N.J. Dep't of Treasury, GRC Complaint No. 2006-191 (July 25, 2007), copyright law does not prohibit access to a government record which is otherwise available under OPRA."

Criminal Investigatory Records

Janeczko v. N.J. Dep't of Law and Pub. Safety, Div. of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (August 2003): The Council ruled that the records were exempt from disclosure under the criminal investigatory exemption and that the exemption does not permit access to the records even after the investigation is closed. The Council's decision was appealed and affirmed in an unpublished opinion of the Superior Court, Appellate Division in May 2004.

O'Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009): The Appellate Division stated that a record must meet the statutory two-prong test to be considered a "criminal investigatory record" exempt from disclosure under OPRA: that the record "'not be required by law to be made,' and the record must 'pertain[] to any criminal investigation or related civil enforcement proceeding.'" Id. at 371. Additionally, the GRC cannot accept an assertion that a record is criminal investigatory in nature in "the absence of a factual showing that [the records] pertained to an actual criminal investigation or to an existing related civil enforcement proceeding . . ." Id. at 385.

Solloway v. Bergen Cnty. Prosecutor's Office, GRC Complaint No. 2011-39 (January 2013): In applying the "criminal investigatory" exemption to certain police reports, the Council reversed its decision in Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated February 27, 2008) (which held that retention schedules have the force of law). The Council reasoned that the definition of "criminal investigatory records" is problematic because the State Records Commission created retention schedules that require agencies to "maintain" various types of these records. The Council noted that the reversal is based on the Supreme Court's interpretation of criminal investigatory records, as well as the fact that applying retention schedules would potentially render the exemption meaningless. Thus, the Council held that "it can be concluded that in passing OPRA, the Legislature intended to preserve the then-existing state of the law with respect to the disclosure of criminal investigatory records, *i.e.*, that the [Records Management Services'] record retention schedules do not operate to render criminal investigatory records disclosable under OPRA." Id. at 8.

De La Cruz, Esq. v. City of Union City (Hudson), GRC Complaint No. 2015-14 (Interim Order dated April 25, 2017): The Council held that the custodian unlawfully denied access to certain incident reports not pertaining to criminal investigations because they did not fall under the criminal investigatory exemption. Id. at 6. However, the Council upheld the denial of a majority of the incident reports under multiple exemptions, including the criminal investigatory exemption.

N. Jersey Media Grp. v. Twp. of Lyndhurst, 229 N.J. 541 (2017): Here, the Supreme Court affirmed that OPRA's criminal investigatory records exemption applies to police records that originate from a criminal investigation. However, the Court stated that "to qualify for the exception — and be exempt from disclosure — a record (1) must not be 'required by law to be made,' and (2) must 'pertain[ ] to a criminal investigation.' N.J.S.A. 47:1A-1.1." Id. at 564.

Additionally, the Court made it clear that if the first prong cannot be met because such a record is required by law to be made, then that record "cannot be exempt from disclosure under OPRA's criminal investigatory records exemption. N.J.S.A. 47:1A-1.1." Id. at 565. Although the Court agreed with the Appellate Division's analysis in O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009), that a clear statement of policy to police officers from the State Attorney General has "the force of law for police entities," it refused to conclude that records retention schedules adopted by the State Records Committee meet OPRA's "required by law" standard.

The Court also noted that even if a record is not required by law to be made, it must still be found to pertain to a criminal investigation. The Court reiterated the Appellate Division's observation that "some police records relate to an officer's community-caretaking function; others to the investigation of a crime." Id. at 569 (citing N. Jersey Media Grp., 441 N.J. Super. at 105).[2] Therefore, the Court reasoned that determining whether such records pertain to a criminal investigation requires a "case-by-case analysis." However, the Court pointed out that police records that stem from "an investigation into *actual or potential* violations of criminal law," such as "detailed investigative reports and witness statements," will satisfy the second prong of OPRA's criminal investigatory records exemption. Id. (emphasis added).

Custodian Not Obligated to Create Records or Provide After Creation

Matthews v. City of Atlantic City (Atlantic), GRC Complaint No. 2008-123 (February 2009): The Council decided that a custodian "was under no obligation to create a list compatible to the Complainant's OPRA request because OPRA does not require a custodian to produce new documents . . ." Id. at 6.

Librizzi v. Twp. of Verona Police Dep't, GRC Complaint No. 2009-213 (August 2010): The Council held that the custodian was under no obligation to create a record in response to the complainant's OPRA request.

Goeckel v. Chatham Borough Police Dep't (Morris), GRC Complaint No. 2013-356 (July 2014): The Council noted that "[t]he GRC has determined that a custodian was under no obligation to provide a record that had not been created at the time of an OPRA request. Blau v. Union Cnty., GRC Complaint No. 2003-75 (January 2005); Paff v. v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012); Delbury v. Greystone Park Psychiatric Hosp. (Morris), GRC Complaint No. 2013-240 (Interim Order dated April 29, 2014)." Id. at 3.

[2]This is instructive for police agencies because it underscores the fact that their role in society is multi-faceted; hence, not all of their duties are focused upon investigation of criminal activity. And only those records created in their capacity as criminal investigators are subject to OPRA's criminal investigatory records exemption.

But see Paff v. Galloway Twp., 229 N.J. 340 (2017): Here, the Supreme Court determined that an agency's electronically stored information is a "government record" under OPRA, unless otherwise exempt. The Court accepted Plaintiff's appeal from the Appellate Division's decision that the Defendant municipality was not required to coalesce basic information into an e-mail log and disclose same. The Appellate Court had reached its conclusion by determining that such an action was akin to creating a record, which OPRA did not require (notwithstanding that the e-mail log would have taken a few key strokes to create). The Supreme Court reversed and remanded, holding that basic e-mail information stored electronically is a "government record" under OPRA, unless an exemption applies to that information. The Court reasoned that:

> A document is nothing more than a compilation of information -- discrete facts and data. By OPRA's language, information in electronic form, even if part of a larger document, is itself a government record. Thus, electronically stored information extracted from an email is not the creation of a new record or new information; it is a government record.
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> With respect to electronically stored information by a municipality or other public entity, we reject the Appellate Division's statement that "OPRA only allows requests for records, not requests for information." [Paff, 444 N.J. Super. 495, 503 (App. Div. 2016) (quoting [Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005)]). That position cannot be squared with OPRA's plain language or its objectives in dealing with electronically stored information.
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> [Id. at 353, 356.]

Deemed Denial

Kelley v. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007): A custodian's failure to respond in writing to a complainant's OPRA request, either granting access, denying access, seeking clarification, or requesting an extension of time within the statutorily mandated seven (7) business days, results in a "deemed" denial of the complainant's OPRA request. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

Discovery vs. OPRA

Mid-Atlantic Recycling Technologies, Inc., v. City of Vineland, 222 F.R.D. 81, (April 27, 2004): Plaintiff filed a complaint against Defendants, alleging that they engaged in arbitrary and irrational conduct in an effort to deprive it of its business through selective enforcement of certain environmental compliance policies. Defendants asserted that the city received numerous requests under OPRA for documents related to issues in the case. Defendants requested that the court enter a protective order to preclude the corporation from conducting discovery outside the limitations imposed by the Federal Rules of Civil Procedure. The court found that the Federal Rules of Civil Procedure did not act as an automatic bar of a litigant's rights to obtain or seek documents under a public record access statute, such as OPRA. The court further found that Defendants did not show good cause for a protection order by demonstrating a particular need for protection. Defendants' broad allegations of harm were not substantiated. The court rejected Defendants' arguments that Fed. Rules Civ. Proc. R. 26 limited or restricted a party's right to request documents under OPRA.

Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (April 2008): The Council held that the custodian's denial of the OPRA request on the grounds that the complainant could only obtain the requested records through discovery is not a lawful basis for a denial of access.

Expungement

Paff v. Borough of Gibbsboro, 2013 N.J. Super. Unpub. LEXIS 1468 (App. Div. 2013): The Appellate Division affirmed the trial court's determination that records falling within the expungement were exempt from disclosure. The court reasoned that:

> We recognize that the purpose of the two statutes are in conflict. OPRA furthers the goal of open records. The expungement statute protects the privacy interests of individual arrestees and convicted persons. However, we find some support for our conclusion in OPRA's recognition of a general privacy right, which must be balanced against the right of access . . . Our conclusion is also supported by OPRA's legislative history. During consideration of the legislation, the Legislature amended the proposed law to assure that the expanded right of access did not "abrogate or erode" existing laws that made records confidential. The Legislature included among its numerous exclusions an express provision covering information rendered confidential by court order. These amendments reflect an intent to subordinate OPRA to pre-existing statutory regimes, pursuant to which documents are shielded from public inspection.
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> We also find support in a general principle of statutory construction. "It is a well-established precept of statutory construction that when two statutes conflict, the more specific controls over the more general." In this case, the expungement statute is more specific than OPRA. OPRA governs access to a broad universe of government records. The expungement statute addresses the narrow subset of documents pertaining to a person's arrest or conviction. Therefore, non-disclosure under the expungement statute should prevail.
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> [Id. at 20-21 (citations omitted).]

Extensions

Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011): The custodian responded to the complainant's request in writing on the fourth (4th) business day following receipt of such request, requesting an extension of time to respond to the request and providing an anticipated deadline date when the requested records would be made available. The complainant did not agree to the custodian's request for an extension of time. However, the Council determined that because the custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date when the requested records would be made available, the custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i).

Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010): The Council determined that, notwithstanding the fact that the complainant did not agree to the extension of time requested by the custodian, the extension was proper "because the Custodian

provided a written response requesting an extension on the sixth (6th) business day following receipt of the Complainant's OPRA request and provid[ed] a date certain on which to expect production of the records requested . . ." Id. at 6.

Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014): The custodian sought a total of seven (7) extensions, totaling fifty-two (52) business days. The complainant initially agreed to the first four (4) extensions but noted that he would grant no further extensions. The Council, noting that extensions are rooted in well settled case law, decided that an additional twenty-seven (27) business days "following expiration of the last agreed-upon extension of time in order to address the balance of the Complainant's request is clearly an excessive amount of time and flies in the face of OPRA's mandate to 'promptly comply . . .' with a records request . . ." Id. at 9. Based on the specific facts of the complaint, the Council determined that the custodian's excessive extensions resulted in a "deemed" denial.

Frivolous Requests & Complaints

Caggiano v. Borough of Stanhope (Sussex), GRC Complaint Nos. 2007-20, 2007-21, 2007-22 & 2007-23 (September 2007): The Council held that "[t]he following evidence of record supports the conclusion that the Complainant in these consolidated Denial of Access Complaints commenced these complaints 'in bad faith, solely for the purpose of harassment[:]'

a. the Complainant filed four (4) separate OPRA requests for identical records within a few days of each other;
b. in each OPRA request, the Complainant failed to wait until the expiration of the statutorily-mandated seven (7) business day response period at N.J.S.A. 47:1A-5.i before he filed another OPRA request for identical records;
c. the Custodian offered the requested records to the Complainant on July 25, 2006 and September 12, 2006 when the contracts were received by the Borough, but the Complainant refused to accept the records and denied that they were contracts;
d. in spite of the disclosure of the requested records (whether or not the Complainant agreed with the content of those records), the Complainant filed the instant Denial of Access Complaints with the GRC;
e. the Complainant failed to inform the GRC in any of his filings that the Custodian had made available to him the requested records prior to the filing of the Complainant's Denial of Access Complaints;
f. in his May 21, 2007 letter to the Custodian, the Complainant threatens to file "five separate complaints for each contract not being immediately available[,]" which is *prima facie* evidence of the Complainant's ongoing bad faith and intention to harass the Custodian and the Borough of Stanhope in these consolidated complaints; and
g. the extremely high number and frequency of OPRA requests filed by the Complainant with the Borough of Stanhope in 2006 and 2007.

The complaints herein should therefore be dismissed as frivolous pursuant to N.J.S.A. 47:1A-7(e)." Id. at 9.

Valdes v. Union City Bd. of Educ. (Hudson), GRC Complaint No. 2013-147 *et seq.*: The Council determined that portions of the complainant's Denial of Access Complaint were frivolous because "the evidence of record shows that the Complainant knew, or should have known, that the complaints filed . . . [were] without any reasonable basis in law or equity and could not be

supported by a good faith argument for an extension, modification or reversal of existing law." Id. at 14. The Council based this decision on the fact that the complainant previously filed multiple complaints based on similar requests for the same records and the complainant's acknowledgement of the Council's previous decisions denying same as valid requests.

Glomar Response

N. Jersey Media Grp. v. Bergen Cnty. Prosecutor's Office, 447 N.J. Super. 182 (App. Div. 2016): Here, the Appellate Division affirmed that a public agency may neither confirm nor deny the existence of records (also known as the "Glomar" response) in response to an OPRA request (the term Glomar response was derived from Phillippi v. CIA, 546 F.2d 1009, 178 U.S. App. D.C. 243 (D.C. Cir. 1976)). The Court held that an agency may use a Glomar response when: 1) it relies upon an exemption that would itself preclude the agency from acknowledging the existence of such records; and 2) presents a sufficient basis for the courts/GRC to determine that the claimed exemption applies. Based on all prevailing case law, as well as the plain language of OPRA, the Court held that "we discern no impediment to the availability of a 'Glomar' response under OPRA's plain language." Id. at 200. The Court also rejected Plaintiff's argument that a "Glomar" response was unlawful because it was not one of the specifically identified exemptions in OPRA.

Grand Jury Records

Dunn v. Burlington Cnty. Prosecutor's Office, GRC Complaint No. 2013-218 (January 2014). The Council concluded that the custodian had lawfully denied access to grand jury materials, including audio or video transcripts, and finding that the N.J. Court Rules and precedent prohibits disclosure without a demonstration of "compelling circumstances", or a "strong showing of particularized need" and court approval through "a two-step judicial determination that such a turnover will be consistent with both the policies furthered by grand jury secrecy and the deterrence of abuse of grand jury process." See State v. Doliner 96 N.J. 236 245, 246, 246 n.2, 256 (1984). See also Maniscalco v. Atlantic Cnty. Prosecutor's Office, GRC Complaint No. 2012-247 (July 2013).

GRC's Authority

Kawanzaa v. N.J. Dep't of Corrections, GRC Complaint No. 2004-167 (March 2005): The Council does not have authority over the content of records pursuant to N.J.S.A. 47:1A-7(b). See also DiCampli v N.J. State Police, GRC Complaint No. 2013-338 (July 2014).

Toscano v. N.J. Dep't of Labor, Div. of Vocational Rehabilitation Serv., GRC Complaint No. 2007-296 (March 2008): The Council does not have authority over records retention pursuant to N.J.S.A. 47:1A-7(b).

Paff v. Neptune Twp. Hous. Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012): The Council does not have the authority to adjudicate whether a custodian is complying with the Open Public Meetings Act.

Identity of Requestor is Irrelevant

White v. William Patterson Univ., GRC Complaint No. 2008-216 (August 2009): The Council held that the identity of a requestor is not a consideration when deciding whether an exemption applies to a government record requested pursuant to OPRA except for those instances set forth at

N.J.S.A. 47:1A-2.2 and N.J.S.A. 47:1A-10. See also Cicero v. N.J. Dep't of Children & Family Serv., Div. of Child Behavioral Serv., GRC Complaint No. 2009-201 (Final Decision dated August 24, 2010).

Riley v. N.J. Dep't of Corrections, GRC Complaint No. 2013-345 (July 29, 2014): The Council determined that the custodian lawfully denied access to the requested mental health records. Groelly v. N.J. Dep't of Corrections, GRC Complaint No. 2010-294 (June 2012) and McLawhorn v. N.J. Dep't of Corrections, GRC Complaint No. 2012-292 (July 2013) (holding that mental health records are exempt from disclosure pursuant to EO 26, even when a complainant sought their own records). See also Spillane v. N.J. State Parole Bd., 2017 N.J. Super. Unpub. LEXIS 2392 (App. Div. 2017) (affirming the Council's decision in GRC Complaint No. 2014-169 that "[complainant's] claimed entitlement to a report which is exempt from disclosure under OPRA finds no support in the statute." Id. at 6.).

Illegible Records

Lopez v. Cnty. of Hudson, GRC Complaint No. 2009-267 (March 2011): The Council held that, "[t]he Custodian's provision of illegible records to the Complainant in response to the OPRA request when legible records existed constitutes a limitation on the right of access accorded by OPRA pursuant to N.J.S.A. 47:1A-1 and a violation of OPRA." See also Wolosky v. Borough of Mt. Arlington (Morris), GRC Complaint No. 2010-194 (Interim Order dated November 29, 2011); Scheeler, Jr. v. Woodbine Bd. of Educ. (Cape May), GRC Complaint No. 2014-59 (Interim Order dated January 30, 2015).

Immediate Access

Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007): The Council held that the "immediate access language of OPRA (N.J.S.A. 47:1A-5(e)) suggests that the Custodian was still obligated to immediately notify the Complainant . . ." Inasmuch as OPRA requires a custodian to respond within a statutorily required time frame, when immediate access records are requested, a custodian must respond to the request for those records immediately, granting or denying access, requesting additional time to respond, or requesting clarification of the request.

Renna v. Cnty. of Union, GRC Complaint No. 2008-110 (March 2009): The Council held that because a completed version of the requested record did not exist in the medium requested at the time of the complainant's OPRA request and required medium conversion pursuant to N.J.S.A. 47:1A-5(d), and because the custodian provided the complainant access to the requested record in the medium requested immediately after the medium conversion was completed, the custodian did not violate N.J.S.A. 47:1A-5(e).

Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-330 (Final Decision dated February 26, 2013): The Council held that the custodian had an obligation to respond to the complainant's request item for salary "immediately, even if said records are part of a larger request containing a combination of records requiring a response within seven (7) business days and immediate access records requiring an immediate response . . ." Id. at 5.

Informing of Record Location Instead of Providing Access

Langford v. City of Perth Amboy, GRC Complaint No. 2005-181 (May 2007): The Council held

that the custodian should have provided the complainant with the requested rules (of which the City was presumably in possession) instead of informing the complainant where the requested rules are located (the Director of Human Services office). As such, the custodian violated N.J.S.A. 47:1A-1.

Rodriguez v. Kean Univ., GRC Complaint No. 2013-69 (March 2014): The Council reversed its prior decision in Kaplan v. Winslow Twp. Bd. of Educ. (Camden), Complaint No. 2009-148 (Interim Order dated June 29, 2010) by providing that custodians have the ability to refer requestors to the exact location on the Internet where a responsive record can be located. Id. at 3-4. The Council noted that a custodian's ability to direct a requestor to the specific location of a government record on the Internet is contingent upon on the requestor's ability to access the records electronically. A custodian is not absolved from providing the record in hardcopy if the requestor is unable to obtain the information from the Internet and makes it known to the custodian within seven (7) business days after receipt of the custodian's response, in which case the custodian will have seven (7) business days from the date of such notice to disclose the record(s) in hardcopy. Id. at 4.

Insufficient Response

O'Shea v. Twp. of West Milford, GRC Complaint No. 2004-17 (April 2005): The Council held that the custodian's initial response that the complainant's request was a duplicate of a previous request was legally insufficient because the Custodian has a duty to answer each request individually. A custodian is vested with the responsibility to respond to each individual request item within seven (7) business days after receipt of such request.

Paff v. Borough of Lavallette (Ocean), GRC Complaint No. 2007-209 (Interim Order dated May 24, 2011): The Council held that the custodian's response was insufficient because he failed to provide the specific lawful basis for each redaction made to executive session minutes (*citing* Schwarz v. N.J. Dep't of Human Serv., GRC Complaint No. 2004-60 (February 2005)).

Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008): The Council held that the custodian's failure to respond to each request item individually resulted in an insufficient response.

Rivera v. City of Camden (Camden), GRC Complaint No. 2010-182 (Interim Order dated January 31, 2012): The Council determined that the custodian's response was insufficient because he failed to identify the specific lawful basis for each redaction made to monthly billing records pursuant to N.J.S.A. 47:1A-5(g).

Herron v. N.J. Dep't of Educ., GRC Complaint No. 2011-56 (April 2012): The Council held that the custodian's response was insufficient because she failed to state definitively whether responsive records existed. See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-48 (Interim Order dated March 25, 2009).

Papiez v. Cnty. of Mercer, Office of the Cnty. Counsel, GRC Complaint No. 2012-59 (March 2013): The Council determined that, although the custodian timely sought an extension of time, she failed to provide a date certain on which she would respond. N.J.S.A. 47:1A-5(i). See also Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2008-48 (Interim Order

dated March 25, 2009); Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2011-327 (February 2013).

Insufficient Search

Schneble v. N.J. Dep't of Envtl. Protection, GRC Complaint No. 2007-220 (April 2008): The custodian initially responded to the complainant's OPRA request by stating that no records responsive existed. The complainant, however, submitted e-mails that were responsive to her request along with the Denial of Access Complaint. The custodian certified that, upon receipt of the e-mails attached to the Denial of Access Complaint, the custodian again searched through DEP's files and located records responsive to the request. The GRC held that because the custodian performed an inadequate initial search, the custodian unlawfully denied the Complainant access to the requested records. See also Lebbing v. Borough of Highland Park (Middlesex), GRC Complaint No. 2009-251 (January 2011); Weiner v. Cnty. of Essex, GRC Complaint No. 2013-52 (September 2013).

Judiciary Records

Tomkins v. City of Newark Mun. Court, GRC Complaint No. 2013-159 (July 2013): The Council administratively dismissed the complaint because it does not have jurisdiction over requests made to the Judiciary. N.J.S.A. 47:1A-7(g). See also DeMeco v. Bergen Cnty. Superior Court, GRC Complaint No. 2017-101 (May 2017).

Lawful Basis Required At Time of Denial

Schwarz v. N.J. Dep't of Human Serv., GRC Complaint No. 2004-60 (February 2005): The custodian did not provide specific citations to OPRA and HIPAA. The Council ruled that the custodian bears the burden of proving that a denial of access is lawful pursuant to N.J.S.A. 47:1A-6. This means that specific citations to the law (OPRA or other law) that permit a denial of access are required **at the time of the denial** and must be included in the Statement of Information.

Litigation

Darata v. Monmouth Cnty. Bd. of Chosen Freeholders, GRC Complaint No. 2009-312 (Interim Order dated February 24, 2011): The Council held that, "[t]he GRC notes that pending litigation is not a lawful basis for denial of access to records requested under OPRA. OPRA provides a statutory right of access to government records which is not in any way supplanted by pending or ongoing litigation." Id. at 8. See also Paff v. City of Union City (Hudson), GRC Complaint No. 2013-195 (Interim Order dated January 28, 2014) at 3.

Location of Government Record Not Relevant

Meyers v. Borough of Fair Lawn, GRC Complaint No. 2005-127 (Final Decision dated December 8, 2005): The complainant sought e-mails from the Mayor's personal e-mail account. The custodian claimed that the e-mails were not government records because they were not maintained in the her files. The Council concluded that the Mayor conducted government business through a personal e-mail account, thus making those e-mails government records according to the definition of a government record in OPRA. N.J.S.A. 47:1A-1.1.

Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506 (App. Div. 2010): The court determined that Defendants were required to obtain from their insurance broker settlement agreements made and maintained on behalf of the County. The court reasoned that "[w]ere we to conclude otherwise, a governmental agency seeking to protect its records from scrutiny could simply delegate their creation to third parties or relinquish possession to such parties, thereby thwarting the policy of transparency that underlies OPRA. *N.J.S.A. 47:1A-1*." Id. at 517.

Michalak v. Borough of Helmetta (Middlesex), GRC Complaint No. 2010-220 (Interim Order dated January 31, 2012): The Council held that the custodian was required to obtain responsive dispatch records from Spotswood Police Department because the Borough had entered into an interlocal (or shared services) agreement with Spotswood to operate their dispatch log. The Council reasoned that: "[s]imilar to a third party agreement between a public agency and a private entity . . . the records responsive . . . were records "made, maintained or kept on file" for the Borough by the [Spotswood Police Department] pursuant to said agreement. As in Burnett, the responsive dispatch logs were created on behalf of the Borough by the SPD. Additionally, as previously held in Meyers, the location of the requested records is immaterial . . ." Id. at 10.

Meeting Minutes

Parave-Fogg v. Lower Alloways Creek Twp., GRC Complaint No. 2006-51 (August 2006): The Council held that **draft, unapproved meeting minutes** are exempt from disclosure as "inter-agency or intra-agency advisory, consultative, or deliberative" material, which is not included within the definition of a government record. N.J.S.A. 47:1A-1.1. See also Libertarians for Transparent Gov't v. Gov't Records Council, 453 N.J. Super. 83 (App. Div.), certif. denied 233 N.J. 484 (2018).

Miller v. Westwood Reg'l Sch. Dist. (Bergen), GRC Complaint No. 2009-49 (April 2010): The Council held that a recording of an agency's public meeting used to draft the agency's official meeting minutes is not deliberative in nature; therefore, such recording is not exempt from disclosure under OPRA as advisory, consultative, or deliberative material (citing In Re Liquidation of Integrity Ins. Co., 165 N.J. 75 (2000), Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274 (2009) and Burlett v. Monmouth Cnty. Bd. of Freeholders, GRC Complaint No. 2004-75 (August 2004).

Merckx v. Twp. of Franklin Bd. of Educ. (Gloucester), GRC Complaint No. 2009-47 (April 2010): The Council held that because all of the requested closed session minutes were approved by the Board of Education at the time of the complainant's OPRA request, they no longer constituted advisory, consultative, or deliberative material pursuant to N.J.S.A. 47:1A-1.1. A second approval by the governing body for public release of the requested minutes is not required because N.J.S.A. 47:1A-5(g) allows for the redaction of information that is exempt from disclosure under OPRA. In fact, OPRA requires the disclosure of a record with redactions of only the information which is asserted to be exempt from disclosure. A denial of access to the entire record is therefore unlawful under OPRA.

Method of Request Submission

Paff v. City of East Orange, 407 N.J. Super. 221 (App. Div. 2009): The court stated that the custodian's refusal to accept OPRA requests via fax is reasonable but that a custodian may not exercise his/her authority under OPRA in a manner that would impose an unreasonable obstacle

to the transmission of a request for a government record. The court also stated that OPRA's requirement that custodians adopt a request form authorizes custodians to direct how government records requests can be transmitted as specified in the form, which need not include every method of transmission mentioned in N.J.S.A. 47:1A-5(g).

Roundtree v. N.J. Dep't of State, GRC Complaint No. 2013-260 (June 2014): The Council held that the New Jersey Department of State's policy not to accept OPRA requests via e-mail does not impose an unreasonable obstacle to the transmission of a request for a government record because the Department accepts requests via mail, hand-delivery, and OPRA Central. See Paff, 407 N.J. Super. 221.

Dello Russo v. City of East Orange (Essex), GRC Complaint No. 2014-430 (Interim Order dated September 29, 2015): The Council held that "the City's policy of banning submission of OPRA requests electronically" represented an unreasonable obstacle on access. Citing Paff, 407 N.J. Super. 221; Paff v. Bordentown Fire Dist. No. 2 (Burlington), GRC Complaint No. 2012-158 (Interim Order dated May 28, 2013). The Council reasoned that "such a decision was consistent" with its evolving view on modern technological advancements and their impact on access.

No Records Exist

Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005): The Council determined that no unlawful denial of access occurred because the custodian certified that no responsive records existed and there was no evidence in the record to refute her certification. See also Pavlenko v. Twp. of Delran (Burlington), GRC Complaint No. 2010-325 (March 2012).

Akers v. Buena Vista Twp. (Atlantic), GRC Complaint No. 2014-190 (November 2014): The custodian certified that she (and others) conducted multiple searches for responsive records over a four (4) day period but was unable to locate same. The Council determined that the custodian did not deny access to responsive records because none existed (citing Kasko v. Town of Westfield (Union), GRC Complaint No. 2011-06 (March 2012)).

Ongoing/Continuing Requests

Blau v. Union Cnty. Clerk, GRC Complaint No. 2003-75 (November 2003): The complainant sought access to copies of deeds and mortgages on an ongoing basis. The Council held that, "[t]he request for copies 'on a continuing basis' is not valid under OPRA and that the requestor must submit a new OPRA request to the custodian for each new batch of documents sought." Id.

Paff v. Neptune Twp. Housing Auth. (Monmouth), GRC Complaint No. 2010-307 (Interim Order dated April 25, 2012): The Council held that if the complainant wanted access to approved meeting minutes, he would have to submit a new OPRA request once the minutes were approved. Donato v. Borough of Emerson, GRC Complaint No. 2005-125 (Interim Order dated February 28, 2007).

Ongoing Investigation

Henderson v. N.J. Dep't of Law and Pub. Safety, Div. of Alcoholic Beverage Control, GRC Complaint No. 2010-139 (May 2011): The Council held that, "[t]he requested records pertain to an ongoing investigation conducted by the [the Division of] Alcoholic Beverage Control, and disclosure of such records would be inimical to the public interest because such disclosure would

jeopardize the state agency's ability to conduct such investigation; thus, the Custodian lawfully denied access to such records. N.J.S.A. 47:1A-3(a); N.J.S.A. 47:1A-6." Id. at 13. See also Norcia v. Borough of North Arlington (Bergen), GRC Complaint No. 2011-133 (June 2012).

OPRA Request Forms

Renna v. Cnty. of Union, 407 N.J. Super. 230 (App. Div. 2009): The Court held that "the form should be used, but no request for information should be rejected if such form is not used." Id. at 245. Therefore, custodians **must** respond to OPRA requests that are submitted on an agency's official OPRA request form and also must respond to non-form written OPRA requests that explicitly invoke OPRA.

Gatson v. Borough of Cliffside Park Police Dep't (Bergen), GRC Complaint No. 2009-239 (October 2010): The Council held that, "[b]ecause a custodian may not refuse a request for records made under OPRA which is in writing and clearly invokes OPRA, and because the evidence of record indicates that the request form used by the Complainant clearly invoked OPRA, the Custodian's denial of access to the records requested violates OPRA pursuant to N.J.S.A. 47:1A-5(g) and [Renna, 407 N.J. Super. at 230]." Id. at 5.

Wolosky v. Twp. of East Hanover (Morris), GRC Complaint No. 2010-185 (Interim Order dated January 31, 2012): The Council determined that the Township's official OPRA request form was not in compliance with N.J.S.A. 47:1A-5(f) (citing O'Shea v. Twp. of West Milford (Passaic), GRC Complaint No. 2007-237 (Interim Order dated May 28, 2008)). Specifically, the form contained potentially misleading statements about the disclosability of personnel and police investigation records. The Council thus ordered the Township either to amend the existing form or adopt the GRC's model request form. See also Wolosky v. City of Paterson (Passaic), GRC Complaint No. 2011-134 (Interim Order dated August 28, 2012).

Out-of-State Requestors

Scheeler v. Atl. Cty. Mun. Joint Ins. Fund, 454 N.J. Super. 621 (App. Div. 2018): In a consolidated decision, the Appellate Division held that "the right to request records under OPRA is not limited to 'citizens' of New Jersey." Id. at 625. In reaching its decision, the court reasoned that, "unlike the former Right to Know Law ("RTKL"), the absence of the term 'citizen' or a definitive definition in OPRA indicated the Legislature's 'intent to expand the public's right of access to public records, beyond that permitted by the RTKL.' Id. at 629-630. The court supported its conclusion by stating that "any doubts about the meaning of the phrase should be resolved in favor of public access, and hence in favor of construing the phrase as a generality rather than an intentional limit on standing. See Serrano v. South Brunswick Twp., 358 N.J. Super. 352, 366 (App. Div. 2003) (ambiguities in OPRA are to be resolved in favor of public access)." Id. at 630-631.

Personnel Records

Dusenberry v. N.J. City Univ., GRC Complaint No. 2009-101 (April 28, 2010): The Council held that the custodian lawfully denied access to outside activity questionnaires because they are personnel records exempt from disclosure and because the University had an obligation to safeguard from public access a citizen's personal information. N.J.S.A. 47:1A-10; North Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Office, 405 N.J. Super. 386 (App. Div. 2009).

Randazzo-Thompson v. City of Vineland (Cumberland), GRC Complaint No. 2010-76 (May 2011): The Council held that, "[t]here is no evidence in the record to indicate that the Complainant herein knew of the right of confidentiality in her personnel file afforded pursuant to N.J.S.A. 47:1A-10, and therefore no evidence that she knowingly waived that right when she signed and submitted the OPRA request form. Accordingly, the Custodian properly denied access to the contents of the Complainant's personnel file pursuant to W. Jersey Title & Guar. Co. v. Indus. Trust Co., 27 N.J. 144, 152 (1958), Country Chevrolet, Inc. v. Twp. of N. Brunswick Planning Bd., 190 N.J. Super. 376, 380 (App. Div. 1983), Paff v. Byrnes, 385 N.J. Super. 574 (App. Div. 2006), and N.J.S.A. 47:1A-10." Id. at 8.

Toscano v. N.J. Dep't of Human Serv., Div. of Mental Health Serv., GRC Complaint No. 2010-147 (May 2011): The Council held that, "[t]he employment application sought by Complainant is not disclosable pursuant to OPRA because it is a personnel record which is exempt from disclosure pursuant to N.J.S.A. 47:1A-10, and Executive Order 26 (Gov. McGreevey 2002). See N.J.S.A. 47:1A-9(a)." Id. at 6.

Sciara v. Borough of Woodcliff Lake (Bergen), GRC Complaint No. 2011-32 (August 2012): The Council first determined that the record at issue was a personnel record, regardless of the complainant's assertion that the record was not part of her personnel record. The Council next held that the custodian lawfully denied access to the record on the basis that the complainant did not knowingly waive the right confidentiality afforded to individuals when requesting their own personnel records. N.J.S.A. 47:1A-10; McGee v. Twp. of East Amwell (Hunterdon), GRC Complaint No. 2007-305 (March 2011).

Gelber v. City of Hackensack (Bergen), GRC Complaint No. 2011-148 (June 2012): The Council held that employee tax information, consisting of W-2's and 1099 forms, were exempt from access under OPRA pursuant to U.S.C. § 6103 (2204). N.J.S.A. 47:1A-9(a); Lucente v. City of Union, GRC Complaint No. 2005-213 (July 2006).

Lotito v. N.J. Dep't of Labor, Human Res., GRC Complaint No. 2013-65 (March 2014): The Council held that PARS files are exempt from disclosure because they contain performance evaluations. Cibo, Jr. v. Rowan Univ., GRC Complaint No. 2003-42 (February 2014); Baker v. N.J. Civil Service Comm'n, GRC Complaint No. 2009-253 (Interim Order dated July 27, 2010); Young v. N.J. Dep't of Personnel, GRC Complaint No. 2007-210 (Interim Order dated September 30, 2009).

Vandy v. Burlington Cnty. Bd. of Social Serv., GRC Complaint No. 2016-319 (Interim Order dated November 13, 2018): Here, the Council addressed multiple types of records submitted as part of the hiring process, including essays. The Council held that the essays fell within the term "other information concerning job applicants" under Executive Order No. 26 (Gov. McGreevey, 2002), and were thus exempt from access under OPRA. Id. at 6-7.

Police Records

Paff v. Ocean Cnty. Prosecutor's Office, 235 N.J. 1 (2018): Here, the New Jersey Supreme Court held that the requested **motor vehicle recorder** ("MVR") recordings were criminal investigatory records and not subject to disclosure under the OPRA. The Court found that, unlike the Attorney General's Use of Force Policy, the Barnegat Township Police Chief's General Order did not have

the force of law supported by statute. Additionally, the Court held that the content contained in the MVR recordings pertained to a criminal investigation, thus satisfying the requirements to qualify as a criminal investigatory record. N.J.S.A. 47:1A-1.1. Also, the Court held that while privacy concerns were not implicated in this instance, other courts should give serious consideration to parties who raise such issues; they must provide more than "generic" privacy objections. See, *infra*, Gorman v. Gloucester City (Camden), GRC Complaint No. 2004-108 (Final Decision dated June 25, 2008).

Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated February 27, 2008): The Council held that **arrest reports** are subject to disclosure with redactions. The Council reasoned that "certain information with respect to a crime must be disclosed pursuant to N.J.S.A. 47:1A-3(b) . . . The most comprehensive government record containing information subject to disclosure pursuant to N.J.S.A. 47:1A-3(b) is the police arrest report, alternatively referred to as a uniform arrest report . . . Arrest reports typically contain the arrestee's (defendant's) name, age, residence, occupation, marital status, time and place of arrest, text of the charges, arresting agency, identity of the arresting personnel, amount of bail and whether it was posted. This is the same information that is mandated for disclosure pursuant to N.J.S.A. 47:1A-3(b)." Id. at 11.

O'Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009): The Court affirmed the trial court's decision that **use of force reports** are not exempt as criminal investigatory records. In reaching this conclusion, the Court determined that the "Attorney General's Guidelines on the Use of Force," which required police departments to make use of force reports, carried the force of law. Thus, the Court held that use of force reports could never meet the two-prong test required to be exempt as criminal investigatory: that is, "'not be required by law to be made,' and the record must 'pertain[] to any criminal investigation or related civil enforcement proceeding.'" O'Shea, 410 N.J. Super. 371. See also N. Jersey Media Grp. v. Twp. of Lyndhurst, 2017 N.J. 745 (2017). **But see** Rivera v. Bergen Cnty. Prosecutor's Office, 2012 N.J. Super. Unpub. LEXIS 2752 (August 8, 2012)(holding that names of suicidal or emotionally disturbed individuals and those displaying other purported psychological conduct that are not arrested may be redacted based on Executive Order No. 26 (Gov. McGreevey 2002) and a balancing test).

Rivera v. City of Passaic (Passaic), GRC complaint No. 2011-214 (Interim Order dated July 31, 2012): The Council's decision here touched on several types of police and personnel records, including **computer-aided dispatch** ("CAD") **reports**, **daily duty logs**, **internal affairs summary reports**, **use of forces reports,** and **vehicle pursuit records**. The Council ordered disclosure of CAD reports, internal affairs summary reports, and use of force reports. However, the Council determined that duty logs and vehicle pursuit records are exempt from access under the security and surveillance exemption. N.J.S.A. 47:1A-1.1.

Seabrooks v. Cnty. of Essex, GRC Complaint No. 2012-230 (Interim Order dated June 25, 2013): The Council held that **arrest warrants** are not exempt as criminal investigatory records because they are required to be made pursuant to N.J. Court Rules. R. 3:2-3(a).

Cheatham v. Borough of Fanwood Police Dep't, GRC Complaint No. 2013-262 (March 2014): The Council determined that police **incident reports** are exempt as "criminal investigatory" records under OPRA. Specifically, police incident reports and related records that summarize information contained in such reports are exempt criminal investigatory records. N.J.S A. 47:1A-1.1; N.J.S.A. 471A-6; Feggans v City of Newark (Essex) GRC Complaint No 2007-238 (October

2008); Nance v. Scotch Plains Twp. Police Dep't. GRC Complaint No 2013-125 (January 2005); Morgano v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2007-156 (Interim Order dated February 27, 2008). **But see** De La Cruz, Esq. v. City of Union City (Hudson), GRC Complaint No. 2015-14 (Interim Order dated April 25, 2017)

Lewis v. Union Cnty. Prosecutor's Office, GRC Complaint No. 2016-131 (Interim Order dated March 27, 2018): Here, the Council held the custodian lawfully denied access to criminal **"rap sheets"** pursuant to N.J.S.A. 47:1A-9(a) and Executive Order No. 9 (Gov. Hughes, 1963).

Dericks (O.B.O. TAPintoSparta.net) v. Sparta Twp. (Sussex), GRC Complaint No. 2016-227 (September 2017): Here, the Council first held that generally, **body-worn camera footage** could not be considered "criminal investigatory" because Attorney General Law Enforcement Directives required it to be maintained (citing N. Jersey Media Grp. v. Twp. of Lyndhurst, 229 N.J. 541 (2017) and O'Shea v. Twp. of West Milford, 410 N.J. Super. 371 (App. Div. 2009)). However, the Council held that the footage at issue there was nonetheless exempt under N.J.S.A. 2A:4A-60.

Prepayment of Copy Fees

Paff v. City of Plainfield, GRC Complaint No. 2006-54 (July 2006): The Council held that "[a]s the custodian is awaiting payment for the duplication cost of the requested records, she is not required to release said records until payment is received pursuant to N.J.S.A. 47:1A-5(b)" See also Reid v. N.J. Dep't of Corrections, GRC Complaint No. 2010-83 (Final Decision dated May 24, 2011); Coulson v. Town of Kearny Fire Dep't (Hudson), GRC Complaint No. 2013-322 (July 2014).

Prevailing Party Attorney's Fees

Teeters v. DYFS, 387 N.J. Super. 423 (App. Div. 2006): A complainant is a "prevailing party" if he/she achieves the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct. Attorney's fees may be awarded when the requestor is successful (or partially successful) via a judicial decree, a quasi-judicial determination, or a settlement of the parties that indicates access was improperly denied and the requested records are disclosed.

Mason v. City of Hoboken and City Clerk of the City of Hoboken, 196 N.J. 51 (2008): A complainant is a "prevailing party" if he/she can demonstrate (1) "a factual causal nexus between plaintiff's litigation and the relief ultimately achieved"; and (2) "that the relief ultimately secured by plaintiffs had a basis in law."

Boggia v. Borough of Oakland, GRC Complaint No. 2005-36 (Interim Order dated October 28, 2005): The Council denied prevailing party attorney's fees to the complainant, who was an attorney representing himself. The Council reasoned that "the courts of the state have determined that the state's fee-shifting statutes are intended to compensate an attorney hired to represent a plaintiff *not an attorney who is the plaintiff representing himself* . . ." (emphasis added). See also Feld v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 903 (App. Div. 2019).

Paff v. N.J. Dep't of Law & Pub. Safety, N.J. State Police, GRC Complaint No. 2010-126 (September 2011): The Council determined that the Complainant was not a prevailing party because the Custodian was unable to prove that the Denial of Access Complaint was not the

catalyst for his response. Specifically, in instances where a custodian fails to respond prior to the filing of a complaint, the burden of proof that the complaint was not the catalyst for a response shifts to him/her per Mason, 196 N.J. 51, 77.

Privacy Concerns

Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004): The complainant sought access to "[c]opies of (1) all moving violations of Officer Michael Tuttle during career with Ho-Ho-Kus Police Department, (2) training records of Officer Tuttle; and (3) records of complaints or internal reprimands against Officer Tuttle." After conducting a balancing test, the Council found that the home addresses should be redacted from the records provided to the complainant.

Perino v. Borough of Haddon Heights, GRC Complaint No. 2004-128 (November 2004): The Complainant requested the name, address, and phone number of a citizen who filed a noise complaint with the Police Department. After conducting a balancing test, the Council held that "[t]he Complainant's stated need for access does not outweigh the citizen's expectation of privacy. In arriving at this conclusion, the potential harm of unsolicited contact and confrontation between the citizen and the OPRA complainant and/or its agents or representatives was considered. Therefore, the name, address and phone number of the citizen who brought the complaint to the Borough's attention should remain redacted from the requested documentation." Id.

Avin v. Borough of Oradell, GRC Complaint No. 2004-176 (March 2005):[3] The complainant in this case sought access to a "list of all homeowners who applied for a fire alarm or burglar alarm permit in the last 3 years." The Council balanced the severity of the security concerns of the residents of the town against the public's right of access under OPRA and held that the custodian should not disclose the homeowners' names and addresses.
Bernstein v. Borough of Allendale, GRC Complaint No. 2004-195 (July 2005):[4] The complainant in this case sought access to the names and addresses of dog license owners. The Council conducted a balancing test and held that "pursuant to N.J.S.A. 47:1A-1 and Executive Order 21 the records should not be disclosed because of the unsolicited contact, intrusion or potential harm that may result." Id.

Faulkner v. Rutgers Univ., GRC Complaint No. 2007-149 (May 2008): The complainant requested names and addresses for Rutgers University football and basketball season ticket holders for 2006. After conducting a balancing test, the Council held that "the Custodian did not unlawfully deny the Complainant access to the requested season ticket holders' lists pursuant to N.J.S.A. 47:1A-1, which states that a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy."

Paff v. Warren Cnty. Office of the Prosecutor, GRC Complaint No. 2007-167 (February 2008): The complainant requested various records pertaining to State v. Philip Gentile, Indictment/Accusation No. 07-02-00060-A. After conducting a balancing test, the Council held

[3] This is one complaint out of seven filed by this requestor to several municipalities regarding the same or similar records.
[4] This is one of six complaints filed by this requestor to several municipalities regarding the same or similar records.

that the name and address of the victim were properly redacted due to privacy concerns pursuant to N.J.S.A. 47:1A-1.

Walsh v. Twp. of Middletown (Monmouth), GRC Complaint No. 2008-266 (Interim Order dated January 26, 2010): The custodian redacted addresses from financial disclosure statements due to privacy concerns. The Council stated that "[p]ursuant to the Local Government Ethics Law, all financial disclosure statements filed are public records. N.J.S.A. 40A:9-22.6(c)." Id. at 6. As such, the Council held that "[b]ased on the language of N.J.S.A. 40A:9-22.6(b), N.J.S.A. 40A:9-22.6(c) and the court's note in Kenny v. Byrne, 144 N.J. Super. 243, 252 (App. Div. 1976), the Custodian has unlawfully redacted addresses of real property owned by public officials. Additionally, the Custodian has failed to bear her burden of proof that said redactions were authorized by law. N.J.S.A. 47:1A-6." Id. at 7. The Council ordered the custodian to release the requested financial disclosure statements without redactions for real property owned.

Burnett v. Cnty. of Bergen, 198 N.J. 408 (2009): Without ambiguity, the court held that the privacy provision "is neither a preface nor a preamble." Rather, "the very language expressed in the privacy clause reveals its substantive nature; it does not offer reasons why OPRA was adopted, as preambles typically do; instead, it focuses on the law's implementation." "Specifically, it imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests." Id. at 423.

Atl. Cnty. SPCA v. City of Absecon, 2009 N.J. Super. Unpub. LEXIS 1370 (App. Div. 2009): The Court conducted a balancing test and determined that the ASPCA's need for access to the requested dog licenses out-weighed the City's need for confidentiality. A major factor in reaching this conclusion was the ASPCA's mission to investigate alleged animal abuse. See also Renna v. Cnty. of Union, 2012 N.J. Super. Unpub. LEXIS 342 (February 17, 2012); Bolkin v. Kwasniewski, 2014 N.J. Super. Unpub. LEXIS 1409, (App. Div. 2014).

Knehr v. Twp. of Franklin (Somerset), GRC Complaint No. 2012-38 (December 2012): The Council held that the Custodian lawfully denied access to dog and cat owners' personal information due to the potential for unsolicited contact. Citing Bernstein, GRC 2005-99 and Faulkner, GRC 2007-149. The Council reached this conclusion after the Complainant admitted that he intended to use the disclosed personal information to market a product or service to the owners. Id. at 8.

Bean, Jr. v. Borough of Belmar (Monmouth), GRC Complaint No. 2013-39 (Interim Order dated December 20, 2013): The Council held that the Custodian unlawful denied access to a donor/donation list. In reaching this conclusion, the Council reviewed balancing test questionnaires submitted by both parties and applied the Burnett balancing test. Ultimately, the Council determined that the test weighed "in favor of disclosing the gift card recipient names and addresses to the Complainant. Most notably, while the GRC is sympathetic to those affected by such a significant weather event, the persons accepting the gift cards of nominal value have limited privacy interest in the face of the public's right to ensure that the gift cards were justly and fairly distributed." Id. at 9.

Public Agency

Fair Share Housing Center, Inc. v. N.J. League of Municipalities, 207 N.J. 489 (2011): The Supreme Court reviewed the Appellate Division's decision that the New Jersey State League of Municipalities ("League") was not a public agency under OPRA. The Court acknowledged that,

although the Appellate Division relied on the holding in The Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 368 N.J. Super. 425 (App. Div. 2004), it erred in "importing into OPRA's definition of 'public agency' the definition of a 'public body' found in [OPMA] . . . [t]he language defining a 'public body' . . . under OPRA are distinctly different." The Court thus held that a creation test, as opposed to a governmental function test, controlled in determining whether an entity was a public agency for purposes of OPRA. Id. Specifically, the Court noted that:

> In Lafayette Yard, we remained faithful to the text of [OPRA] and determined that, in essence, the nonprofit corporation (an 'instrumentality') was *created* by a public subdivision therefore making it a 'public agency.' . . . The creation test, not the governmental-function test, controlled. Our decision in this case, finding that the [League] is a 'public agency,' is wholly consistent with . . . Lafayette Yard.
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> [Id. at 507.]

The Court thus reversed the Appellate Division's decision and determined that the League was a "public agency" subject to the provisions of OPRA.

Sussex Commons Ass'n, LLC v. Rutgers, the State Univ., 210 N.J. 531 (2012): The Supreme Court held that Rutgers Law Clinic did not perform a government function and was not controlled by either Rutgers or any other government agency. Thus, Rutgers Law Clinic was not classified as a "public agency" and as not subject to OPRA.

Frey v. Delaware Valley Reg'l Planning Comm., GRC Complaint No. 2012-139 (June 2013): The Council determined that the Commission, which is a bi-state agency, is not subject to the provision of OPRA. The Council reasoned that:

> New Jersey courts have consistently determined that bi-state agencies are not subject to a single-state's jurisdiction. Furthermore, an analysis of the [Ballinger v. Del. River Port Auth., 311 N.J. Super. 317, 324 (App. Div. 1998), *aff'd*, 172 N.J. 586 (2002)] factors does not lend itself to a determination that [the Commission] should be subject to New Jersey law. First, the "Delaware Valley Urban Area Compact" does not explicitly provide for unilateral state action. Second, there is no complementary or parallel legislation since the definitions contained in OPRA do not suggest any intent on the part of the Legislature to extend its application to bi-state agencies. OPRA fails to reflect any intent to exercise unilateral control over a bi-state agency's procedures to provide public access to its records. Had the Legislature intended for OPRA to apply to bi-state agencies, it would have reflected this intent within the law. Del. River & Bay Auth. Finally, there is no indication that [the Commission] has impliedly consented to be subject to New Jersey's OPRA law.
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> [Id. at 3.]

Paff v. N.J. State Firemen's Ass'n, 431 N.J. Super. 278 (App. Div. 2013): The Appellate Division noted that, as discussed in League of Municipalities, OPRA lacks a "government-function" test, but that "[w]hile proof of governmental function is not necessary to qualify an entity as a public agency, the Court [in League of Municipalities] did not preclude the possibility that such proof

would be relevant and perhaps sufficient to qualify the entity." Id. at 289. The Court thus determined that the Firemen's Association was a "public agency" under OPRA, reasoning that it "owes its existence to state law, which authorized its creation, granted it powers, including powers over local associations, and barred the creation of a competing state association. The Court noted that the Association's financial activities implicated OPRA's aim to shed light on the fiscal affairs of government because it received substantial tax revenues, it had authority to assure those funds were properly spent, and it both disbursed funds and oversaw such disbursement by local groups. The Court further reasoned that the Association served numerous government functions in addition to the receipt and management of tax revenues, including providing welfare benefits to a significant number of public servants and regulating the activities of other corporate entities.

Paff v. Cmty. Educ. Ctr., 2013 N.J. Super. Unpub. LEXIS 2813 (App. Div. 2013): The Appellate Division affirmed the Law Division's decision that Community Education Center was not a "public agency" for purposes of OPRA. Specifically, the Court agreed that Community Education Center, an independent corporation operating in seventeen (17) states and Bermuda, was neither created nor controlled by any government entity.

Records Previously Provided

Bart v. City of Paterson Hous. Auth., 403 N.J. Super. 609 (App. Div. 2008): The Appellate Division reversed the Council's decision that the custodian knowingly and willfully violated OPRA (GRC Complaint No. 2005-145). The Court held that a complainant could not have been denied access to a requested record if he already had in his possession at the time of the OPRA request the document he sought pursuant to OPRA. Specifically, the Court noted that the complainant had the record at issue in his possession, even going so far as to attach a copy of the record to his Denial of Access Complaint. Further, the Court noted that requiring a custodian to duplicate another copy of the requested record and send it to the complainant does not advance the purpose of OPRA, which is to ensure an informed citizenry.

Records Provided, All

Burns v. Borough of Collingswood, GRC Complaint No. 2005-68 (September 2005): The custodian stated in the Statement of Information that one (1) record responsive to the complainant's March 2, 2005 OPRA request was provided and that no other records responsive existed. The complainant contended that she believed more records responsive did, in fact, exist. The GRC requested that the custodian certify as to whether all records responsive had been provided to the complainant. The custodian subsequently certified on August 1, 2005, that the record provided to the complainant was the only record responsive. The GRC held that the custodian bore the burden of proving that she provided all responsive records that existed and there was no competent, credible evidence on record to refute the certification. See also Wadhams v. Town of Belvidere (Warren), GRC Complaint No. 2010-209 (October 2011); Owens v. Mt. Holly Twp. (Burlington), GRC Complaint No. 2013-233 (February 2014).

Redactions

Paff v. Borough of Manasquan (Monmouth), GRC Complaint No. 2009-281 (Interim Order dated March 29, 2011): The Council held that, "[t]he method of 'whiting out' the executive session portion of the minutes provided did not allow the Complainant to clearly identify the specific location. Therefore, the Custodian's method of 'whiting out' the requested minutes is not 'a

visually obvious method that shows . . . the specific location of any redacted material in the record' and is thus not appropriate under OPRA. N.J.S.A. 47:1A-5(g)." Id. at 8-9.

Ripeness

Sallie v N.J. Dep't of Banking and Ins., GRC Complaint No. 2007-226 (April 2009): The complainant forwarded a complaint to the GRC, asserting that he had not received a response from the custodian and that seven (7) business days would have passed by the time the GRC received the Denial of Access Complaint. The custodian argued in the Statement of Information that the complainant filed the complaint prior to the expiration of the statutorily mandated seven (7) business day time frame set forth in N.J.S.A. 47:1A-5(i). The Council held that the complaint was unripe for adjudication and dismissed same. See also Werner v. N.J. Civil Serv. Comm'n., GRC Complaint No. 2011-151 (December 2012); Herron v. Borough of Red Bank (Monmouth), GRC Complaint No. 2012-113 (April 2012); Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-325 (Final Decision dated October 27, 2015.

School Records

Martinez v. Edison Bd. Of Educ. (Middlesex), GRC Complaint No. 2014-126 (May 2015): In a case regarding **student records**, the complainant here sought access to, among other items, e-mails between eight (8) individuals regarding his daughter over a specified time frame. The custodian responded by disclosing responsive records with redactions for all information pertaining to other students. The Council upheld said redactions, deciding that "N.J.A.C. 6A:32-7.5 only allowed the Complainant to have access to information regarding" his daughter (citing N.J.S.A. 47:1A-9; Popkin v. Englewood Bd. of Educ. (Bergen), GRC Complaint No. 2011-263 (December 2012)).

Lefkowitz v. Montville Twp. Pub. Sch. (Mercer), GRC Complaint No. 2016-138 (May 2018): The Council held that **secondary school tests, quizzes, and exams** were exempt from disclosure under N.J.S.A. 47:1A-9 and Executive Order No. 9 (Gov. Hughes, 1963). In reaching this conclusion, the Council found that N.J.A.C. 6A:8-3.1(c)(3)(iii) required testing as part of its regular benchmark assessments, thus conforming to the executive order's exemption for "questions on examinations required to be conducted by any State or local government agency."

Street v. Mt. Arlington Sch. Dist. (Bergen), GRC Complaint No. 2017-103 *et seq.* (June 2019): Here, the Council held that **security camera footage** taken during a lockdown was exempt from disclosure under N.J.S.A. 47:1A-1.1 (citing Gilleran, 227 N.J. 159; WNBC-TV v. Allendale Bd. of Educ., 2015 N.J. Super. Unpub. LEXIS 1330 (June 4, 2015)).

Search vs. Research

Donato v. Twp. of Union, GRC Complaint No. 2005-182 (February 2007): The Council held that the custodian was obligated to ***search*** her files to ***find*** the identifiable government records listed in the complainant's OPRA request (auto accident reports for a certain period of time). The Council further held, however, that the custodian was not required to ***research*** her files to figure out which records, if any, might be responsive to a broad and unclear OPRA request in accordance with the decision of MAG and N.J. Builders.

Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2013-43 *et seq.* (Interim Order dated September 24, 2013): The Council determined that a request seeking e-mails without

naming individuals was still valid. The Council stated that:

> [A] valid OPRA request requires a search, not research. An OPRA request is thus only valid if the subject of the request can be readily identifiable based on the request. Whether a subject can be readily identifiable will need to be made on a case-by-case basis. When it comes to e-mails or documents stored on a computer, a simple keyword search may be sufficient to identify any records that may be responsive to a request. As to correspondence, a custodian may be required to search an appropriate file relevant to the subject. In both cases, emails and correspondence, a completed "subject" or "regarding" line may be sufficient to determine whether the record relates to the described subject. Again, 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 e-mails and correspondence to determine if same is responsive: in other words, conduct research.
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> [Id. at 5-6.]

Security and Surveillance

Burton v. N.J. Dep't of Law & Pub. Safety, Div. of State Police, GRC Complaint No. 2010-330 (May 2011): The Council held that, "[t]he Custodian has lawfully denied access to the requested payroll records because said records are exempt from public access under N.J.S.A. 47:1A-9(a), which upholds exemptions contained in an Executive Order of the Governor or any regulation promulgated pursuant to an Executive Order of the Governor. Executive Order No. 47 (Christie 2010) permits rules proposed by the NJ Department of Law & Public Safety to remain in full effect. N.J.A.C. 13:1E-3-2(a)3 exempts records which may reveal an agency's surveillance, security, or investigative techniques or procedures, and N.J.A.C. 13:1E-3.2(a)7 exempts '[t]he duty assignment of an individual law enforcement officer or any personally identifiable information that may reveal or lead to information that may reveal such duty assignment, including, but not limited to, overtime data pertaining to an individual law enforcement officer.' Despite payroll records being public records under N.J.S.A. 47:1A-10, the release of said records in this instance leaves the Executive Protection Bureau vulnerable to how heavy of a security level it places on protecting various dignitaries and are therefore exempt under the regulations cited above." Id. at 12-13.

Rivera v. City of Plainfield Police Dep't (Union), GRC Complaint No. 2009-317 (May 2011): The Council held that, "[b]ecause request Items No. 3 and 10 sought police daily duty logs, which records necessarily include details regarding surveillance techniques and staffing levels which, if disclosed, could pose a risk to the safety of police personnel as well as civilians employed by the Plainfield Police Department, such records are exempt from the definition of a government record pursuant to N.J.S.A. 47:1A-1.1."

Gilleran v. Bloomfield, 227 N.J. 159 (2016): Here, the Supreme Court, by majority opinion, held that:

> The wholesale release of videotape footage from a surveillance camera, which is part of a government facility's security system protecting its property, workers, and visitors, would reveal information about the system's operation and also its

> vulnerabilities, jeopardizing public safety. The compelled release under OPRA, on demand for any or no reason, of a security system's operational product revealing otherwise nonpublic information about monitoring capability is at odds with the legislative intent in creating security exceptions to OPRA. The security exceptions will be applied in a commonsense manner that fulfills the very purpose of having security-based exceptions, and we will do so mindful of present day practical challenges to maintenance of security in public facilities.
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> [Id. at 164.]

Special Service Charge

Fisher v. Dep't of Law and Public Safety, Division of Law, GRC Complaint No. 2004-55 (August 2006): The Council held that a special service charge is allowed under OPRA. N.J.S.A. 47:1A-5(c). The Council established a 14 factor criteria for evaluating: (1) whether a special service charge is warranted and (2) whether the amount is reasonable.
Courier Post v. Lenape Reg'l High Sch., 360 N.J. Super. 191 (Law Div. 2002): The Court found that the request for six and one-half years of attorneys' monthly itemized bills required an extraordinary expenditure of time and effort to accommodate the request. Therefore, a special service charge was allowed for the custodian's time.

Palkowitz v. Borough of Hasbrouck Heights (Bergen), GRC Complaint No. 2014-302 (Interim Order dated May 26, 2015): Here, the Council held that a special service charge was warranted, but the proposed fee was unreasonable. N.J.S.A. 47:1A-5(c). Specifically, the custodian charged for an hour of work at a rate higher than the lowest paid employee capable of performing that task. The Council thus adjusted the charge and required disclosed after payment of the new fee by the Complainant. See also Rivera v. Rutgers, The State Univ. of N.J., GRC Complaint No. 2009-311 (Interim Order dated May 29, 2012).

Substantial Disruption

Caggiano v. N.J. Dep't of Law & Pub. Safety, Div. of Consumer Affairs, GRC Complaint No. 2007-69 (September 2007): The custodian certified that an extended review of records as contemplated by the complainant (for approximately a week) would substantially disrupt agency operations by requiring the extended attendance of a Division of Consumer Affairs employee and a New Jersey State Police Officer at the complainant's inspection of the requested records. The Council stated that:

> The Custodian has reasonably offered to provide the Complainant with copies of all the records responsive upon payment of the statutory copying rates, which the Complainant has declined. The Custodian has also reasonably offered the Complainant two (2) hours to inspect the seven hundred forty-five (745) pages responsive to the Complainant's request, of which the Custodian states a substantial portion are records which the Complainant himself submitted to the Division. Additionally, the Custodian has reasonably offered to accommodate the Complainant's request by charging a special service charge for the hourly rate of a Division of Consumer Affairs employee to monitor the Complainant's inspection of the requested records in the event that said inspection exceeds two (2) hours. Further, the Custodian has reasonably offered to copy the remaining records at the OPRA

> copying costs in the event the Complainant exceeds a reasonable amount of time for the record inspection, which the Custodian states is one (1) business day. However, the Complainant objects to paying any inspection fees, as well as a two (2) hour inspection time limit.

The Council held that "because the Custodian has made numerous attempts to reasonably accommodate the Complainant's request but has been rejected by the Complainant, the Custodian has not unlawfully denied access to the requested record under N.J.S.A. 47:1A-5(c) and N.J.S.A. 47:1A-5(g)." See also Vessio v. N.J. Dep't of Cmty. Affairs, Div. of Fire Safety, GRC Complaint No. 2007-63; Dittrich v. City of Hoboken (Hudson), GRC Complaint No. 2008-13 (June 2009); Karakashian v. N.J. Dep't of Law & Pub. Safety, Div. of Consumer Affairs, Office Bd. of Medical Examiners, GRC Complaint No. 2013-121 *et seq.* (November 2013).

Caldwell v. Vineland Bd. of Educ. (Cumberland), GRC Complaint No. 2009-278 (March 2011): The Council determined that the custodian could not deny a request as a substantial disruption of agency operations without first attempting to reach a reasonable accommodation. N.J.S.A. 47:1A-5(g).

Text Messages

Verry v. Franklin Fire Dist. No. 1 (Somerset), GRC Complaint No. 2014-387 (July 2015): Here, the Council determined that "[a] plain reading of OPRA supports that text messages are 'government records'" so long as they were made, maintained, kept on file, or received in the course of official business. Id. at 4-5. The Council stressed that its holding broadly addressed whether text messages were "government records" and "should not be construed to provide for unmitigated access to text messages." Id.