



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

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ROBIN BERG TABAKIN, Chair  
COMMISSIONER JOSEPH V. DORIA, JR.  
COMMISSIONER LUCILLE DAVY  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

**FINAL DECISION**

**November 19, 2008 Government Records Council Meeting**

Cynthia Feiler-Jampel  
Complainant

Complaint No.2007-125

v.

Somerset County Prosecutor's Office  
Custodian of Record

At the November 19, 2008 public meeting, the Government Records Council ("Council") considered the November 13, 2008 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, accepts the Administrative Law Judge's Initial Decision dated August 20, 2008. No further adjudication is required.

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

Final Decision Rendered by the  
Government Records Council  
On The 19<sup>th</sup> Day of November, 2008

Robin Berg Tabakin, Chair  
Government Records Council

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



David Fleisher, Secretary  
Government Records Council

**Decision Distribution Date: November 20, 2008**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
November 19, 2008 Council Meeting**

**Cynthia Feiler-Jampel<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-125**

v.

**Somerset County Prosecutor's Office<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Inspect all papers, documents, etc. and full records relating to the file named "Robert and Randi Franco # 0609-2031."

**Request Made:** May 1, 2007 and May 18, 2007

**Response Made:** May 11, 2007, June 27, 2007<sup>3</sup> and July 18, 2007

**Custodian:** Daniel Livak

**GRC Complaint Filed:** May 24, 2007

**Background**

**November 28, 2007**

Government Records Council's ("Council") Interim Order. At its November 28, 2007 public meeting, the Council considered the November 21, 2007 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that based on the conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts to determine whether the custodian unlawfully denied access, and if so, for a further determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

**November 29, 2007**

Council's Interim Order distributed to the parties.

**February 5, 2008**

Complaint transmitted to the Office of Administrative Law.

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

<sup>2</sup> Represented by Scott D. Rodgers, Esq. (Somerville, NJ).

<sup>3</sup> Responses were verbal.

**August 20, 2008**

Administrative Law Judge's ("ALJ") Initial Decision. The ALJ **FINDS** that:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures.
2. The settlement fully disposes of all issues in controversy and is consistent with the law.

The ALJ **CONCLUDES** that the parties' agreement meets the requirements of *N.J.A.C.* 1:1-19.1. The ALJ **ORDERS** that the parties comply with the settlement terms and that these proceedings be concluded.

### Analysis

No legal analysis required.

### Conclusions and Recommendations

The Executive Director respectfully recommends the Council accept the Administrative Law Judge's Initial Decision dated August 20, 2008. No further adjudication is required.

Prepared By: Dara Lownie  
Senior Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

November 13, 2008



## State of New Jersey

### GOVERNMENT RECORDS COUNCIL

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VINCENT P. MALTESE, Chairman  
ACTING COMMISSIONER JOSEPH V. DORIA, JR.  
COMMISSIONER LUCILLE DAVY  
ROBIN BERG TABAKIN  
DAVID FLEISHER  
CATHERINE STARGHILL Esq., Executive Director

### INTERIM ORDER

#### November 28, 2007 Government Records Council Meeting

Cynthia Jampel  
Complainant

Complaint No. 2007-125

v.

Somerset County Prosecutor's Office  
Custodian of Record

At the November 28, 2007 public meeting, the Government Records Council ("Council") considered the November 21, 2007 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations as amended. The Council, therefore, finds that based on the conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts to determine whether the custodian unlawfully denied access, and if so, for a further determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Interim Order Rendered by the  
Government Records Council  
On The 28<sup>th</sup> Day of November, 2007

Vincent P. Maltese, Chairman  
Government Records Council

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

Government Records Council



**Decision Distribution Date: November 29, 2007**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
November 28, 2007 Council Meeting**

**Cynthia Feiler-Jampel<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-125**

v.

**Somerset County Prosecutor's Office<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:** Inspect all papers, documents, etc. and full records relating to the file named "Robert and Randi Franco # 0609-2031."

**Request Made:** May 1, 2007 and May 18, 2007

**Response Made:** May 11, 2007, June 27, 2007<sup>3</sup> and July 18, 2007

**Custodian:** Daniel Livak

**GRC Complaint Filed:** May 24, 2007

**Background**

**May 1, 2007**

Complainant's Open Public Records Act ("OPRA") request. The Complainant requests the records relevant to this complaint listed above on an official OPRA request form.

**May 23, 2007**

E-mail from Complainant to GRC. The Complainant states that on May 1, 2007 she faxed her OPRA request to the Custodian and followed up with a phone call to ensure that the Custodian received the request. The Complainant states that she followed up again with Mary Ann Tracchio, Office Manager, by phone approximately ten (10) days after submitting her OPRA request, whereupon the Office Manager advised the Complainant that the Assistant Prosecutor will remove selected records from the requested file prior to releasing said file to the Complainant. The Complainant states that she called the Office Manager again on May 18, 2007 and re-sent her OPRA request on said date. The Complainant states that the Office Manager advised her that she could view the requested file on May 23, 2007.

Additionally, the Complainant states that on May 23, 2007 she went to the Prosecutor's Office to review the requested file. The Complainant states that the Office Manager informed her that the Assistant Prosecutor had not yet removed selected records

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

<sup>2</sup> Represented by Robert J. Hawkes (Somerville, NJ).

<sup>3</sup> Responses were verbal.

from the requested file and therefore the Complainant could not review the file. The Complainant states that the Office Manager also informed her that she attempted to notify the Complainant via telephone that she would not yet be able to review the requested file on May 23, 2007 as arranged. The Complainant states that the Office Manager permitted her to review the records that the Complainant had sent in herself. The Complainant states that she has not been granted or denied access to the requested file.

**May 24, 2007**

Denial of Access Complaint filed with the Government Records Council (“GRC”) with the following attachments:

- Complainant’s OPRA request dated May 1, 2007
- Complainant’s OPRA request dated May 18, 2007
- E-mail from Complainant to GRC dated May 23, 2007<sup>4</sup>

The Complainant states that she submitted her OPRA request on May 1, 2007. The Complainant states that on May 11, 2007 she called the Office Manager and inquired about the status of her OPRA request. The Complainant states that the Office Manager advised her that the Prosecutor’s Office wanted to remove certain records from the requested file prior to providing said file to the Complainant. Additionally, the Complainant states that she resubmitted her OPRA request on May 18, 2007.

**June 12, 2007**

Offer of Mediation sent to both parties.

**June 21, 2007**

Request for the Statement of Information sent to the Custodian.

**July 5, 2007**

Letter from GRC to the Custodian. The GRC sends a letter to the Custodian indicating that the GRC provided the Custodian with a request for a Statement of Information on June 21, 2007 and to date has not received a response. Further, the GRC states that if the Statement of Information is not submitted within three (3) business days, the GRC will adjudicate this complaint based solely on the information provided by the Complainant.

**July 10, 2007**

The Custodian’s signed Agreement to Mediate. The Complainant did not agree to mediate this complaint.

**July 10, 2007**

Custodian’s Statement of Information (“SOI”) with the following attachments:

- Complainant’s OPRA request dated May 1, 2007
- Custodian’s Agreement to Mediate dated July 10, 2007

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<sup>4</sup> The Complainant includes additional records which are not relevant to this complaint.  
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Mary Ann Tracchio, Office Manager, states that she received the Complainant's OPRA request on May 1, 2007. The Office Manager states that she contacted the Complainant on May 11, 2007 to make arrangements for the Complainant to review the requested file. The Office Manager also states that on May 23, 2007 the Complainant came into the Custodian's office and reviewed the requested file for approximately one (1) hour. The Office Manager states that the Complainant was not interested in any of the records or tapes that were available. Additionally, the Office Manager states that on June 27, 2007 she left a voicemail message for the Complainant requesting that the Complainant contact the Custodian in order to review the requested file again. The Office Manager states that the Complainant has not responded to said voicemail message.

**July 10, 2007**

Letter from GRC to Custodian. The GRC requests the Custodian provide a document index as was requested in the SOI.

**July 13, 2007**

The Complainant's response to the Custodian's SOI. The Complainant contends that the Prosecutor's Office has been untruthful in its reports. The Complainant asserts that when she went to review the requested records on May 23, 2007, the Office Manager informed her that she had tried to call the Complainant to inform her that the requested file was not ready for the Complainant's review. The Complainant states that she has been leaving messages for the Office Manager who is not returning the Complainant's phone calls. The Complainant asserts that the Prosecutor's Office is selectively covering up for a theft perpetrated by Robert Franco, Esq. because the Prosecutor's Office had not removed selected records from the requested file on May 23, 2007, therefore the Complainant could not review said file.

**July 18, 2007**

Letter from Custodian to Complainant. The Custodian states that the records provided on this date consisted of thirty eight (38) pages. The Custodian requests that the Complainant make her check payable to the Somerset County Prosecutor's Office in the amount of \$17.00.

**July 18, 2007**

E-mail from Complainant to GRC. The Complainant asserts that the Prosecutor's Office withheld the name of the Assistant Prosecutor and did not provide exculpatory evidence in the requested file.

**July 18, 2007**

Custodian's document index. The Custodian lists the records not provided to the Complainant and the legal explanation for the denial of access to said records in the table below.<sup>5</sup>

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<sup>5</sup> The Custodian also included a list of the records provided to the Complainant.

<b>Records Not Provided to the Complainant</b>	<b>Legal Citation for Non-Disclosure</b>
Handwritten notes (13 pages)	Deliberative process privilege <u>N.J.S.A.</u> 47:1A-1.1
Handwritten notes dated December 12, 2006 (1 page)	Deliberative process privilege <u>N.J.S.A.</u> 47:1A-1.1
Handwritten notes (6 pages)	Deliberative process privilege <u>N.J.S.A.</u> 47:1A-1.1
SIU Case Memorandum dated April 20, 2007 (5 pages)	Deliberative process privilege <u>N.J.S.A.</u> 47:1A-1.1
Handwritten notes (3 pages)	Deliberative process privilege <u>N.J.S.A.</u> 47:1A-1.1
Handwritten notes (9 pages)	Deliberative process privilege <u>N.J.S.A.</u> 47:1A-1.1
Special Investigation Case Review Form (2 pages)	Deliberative process privilege <u>N.J.S.A.</u> 47:1A-1.1
Report of Criminal Investigation Somerset County Prosecutor's Office Database Report dated April 23, 2007 (2 pages)	Deliberative process privilege <u>N.J.S.A.</u> 47:1A-1.1
Report of Criminal Investigation Somerset County Prosecutor's Office Database Report dated September 19, 2006 (2 pages)	Deliberative process privilege <u>N.J.S.A.</u> 47:1A-1.1
Motor Vehicle Registration Information Inquiry dated September 15, 2006 (3 pages)	Criminal History Record
Automated Case Management System Inquiry dated November 2, 2006 (4 pages)	<u>N.J.S.A.</u> 47:1A-9(a); <u>N.J.A.C.</u> 13:5-1.1; GRC # 2004-152
Admitting Form – Elizabeth General Medical Center/Cynthia Jampel dated July 9, 1997 (1 page)	Executive Order # 26
Check No. 143 in the amount of \$50,000.00 dated May 6, 2005 (1 page)	<u>N.J.S.A.</u> 47:1A-9 – records received as a result of Grand Jury Subpoena
Bank Deposit Slip – Norman Tauger (\$3000.00) (1 page)	<u>N.J.S.A.</u> 47:1A-9 – records received as a result of Grand Jury Subpoena

### **August 1, 2007**

E-mail from Complainant to GRC. The Complainant contends that the document index provided by the Custodian is inaccurate. The Complainant attaches several e-mails which she claims were withheld from her review on July 18, 2007.

### **August 13, 2007**

E-mail from Complainant to GRC. The Complainant states that on this date she went to the Prosecutor's Office to review the requested file again. The Complainant states that upon reviewing the files the Complainant found her own hospital admittance form (which the Custodian certifies was not provided to the Complainant on July 18, 2007).

**August 27, 2007**

Letter from GRC to Custodian. The GRC requests that the Custodian provide a general nature description of each record not provided to the Complainant including redactions, if any. Additionally, the GRC requests clarification as to who is the Custodian of Records since both Mary Ann Tracchio, Office Manager, and Daniel Livak, Administrator are listed as Custodian on the SOI.

**August 28, 2007**

E-mail from Custodian to GRC. The Custodian certifies that he has already provided the GRC with a general description of each item not provided to the Complainant as well as the legal citation, as was previously requested by the GRC. Additionally, the Custodian certifies that he is the Custodian of Records but that Mary Ann Tracchio, Office Manager/Senior Advisor, is authorized to act on his behalf as required.

**August 28, 2007**

E-mail from GRC to Custodian. The GRC states that in the Custodian's document index dated July 18, 2007, the Custodian references five (5) sets of "Handwritten Notes" as records not provided to the Complainant. The GRC requests additional information regarding these records such as the subject matter, author, date, etc., so as to more accurately describe said records. Additionally, the GRC requests that the Custodian sign the signature page of the SOI and attaches a blank copy of said page.

**August 28, 2007**

Custodian's signed SOI.

**August 28, 2007**

Custodian's revised document index to include a description of the various handwritten notes which were not provided to the Complainant. The Custodian states that the following handwritten notes were withheld pursuant to N.J.S.A. 47:1A-1.1 (deliberative process privilege) and N.J.S.A. 47:1A-9 (information received as a result of a Grand Jury Subpoena/Testimony):

1. Handwritten notes of Assistant Prosecutor Eric Mark dated July 27, 2006, September 21, 2006 and November 6, 2006 (3 pages)<sup>6</sup>
2. Handwritten notes of Detective J.J. Burke dated December 12, 2006 (1 page)
3. Handwritten notes of Assistant Prosecutor Tom Chirichella regarding Larry Goldspiel, Cindy Jampel, Nancy McLaughlin and Norman Tauger (6 pages)
4. Handwritten notes of Sergeant Fodor and Detective J.J. Burke dated October 31, 2006, November 2, 2006 and November 6, 2006 (3 pages)
5. Handwritten notes of Detective Burke dated August 25, 2006, September 14, 2006, September 15, 2006, September 18, 2006, September 23, 2006, September 26, 2006, September 29, 2006, October 2, 2006, October 3, 2006, October 5, 2006, October 10, 2006, October 25, 2006 and October 26, 2006 (9 pages)

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<sup>6</sup> The Custodian states that his document index dated July 18, 2007 erroneously listed said record as 13 pages due to typographical error. The Custodian provided no clarification as to the content of these records.

**August 30, 2007**

E-mail from Complainant to Custodian. The Complainant claims that her medical admission record was not withheld (as the Custodian stated in his document index). The Complainant claims that she was provided a copy of said record and had the Office Manager initial the back.

**September 25, 2007**

Letter from GRC to First Assistant Prosecutor. The GRC requests that the Custodian provide the following information:

1. A full and complete document index including a legal certification pursuant to NJ Court Rule 1:4-4
2. Additional facts, if any, in response to the Complainant's assertion that she was not provided access to the requested file on May 23, 2007

**October 1, 2007**

Custodian's revised document index. The Custodian certifies that dates of birth, social security numbers, phone numbers and financial identifiers were redacted from the records provided to the Complainant pursuant to N.J.S.A. 47:1A-1.1.

**October 1, 2007<sup>7</sup>**

Office Manager's certification. The Office Manager certifies that she notified the Complainant via telephone on May 11, 2007 that the requested file would be available for review the following week. The Office Manager certifies that she met with the Complainant on May 23, 2007 (the Complainant's choice of date and time) so that the Complainant could review the requested file.

The Office Manager also certifies that she left a voicemail message for the Complainant on June 27, 2007 so that the Complainant could review the requested file again. The Office Manager certifies that the Complainant made arrangements to review the requested file on August 7, 2007 because the Complainant failed to take all the paperwork she wanted previously. Additionally, the Office Manager certifies that the Complainant wanted to listen to one of the CDs in the requested file, but the office equipment to play the CD was not working. The Office Manager certifies that the Complainant was provided with copies of nineteen (19) pages of records and advised that Detective Lippitt would arrange for the Complainant to listen to the CD the next day. The Office Manager certifies that the Complainant called on August 9, 2007 requesting to review the CD as well as the records the Complainant had previously reviewed. The Office Manager certifies that she informed the Complainant that Detective Lippitt would not be available until August 13, 2007 to provide the appropriate equipment to listen to the CD. The Office Manager certifies that the Complainant listened to said CD on August 13, 2007 and also asked to review the requested file again. The Office Manager certifies that the Complainant was provided with copies of three (3) records from the requested file.

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<sup>7</sup> Additional correspondence was submitted by the parties. However, said correspondence is either not relevant to this complaint or restates the facts/assertions already presented to the GRC.  
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## Analysis

### **Whether the Custodian unlawfully denied access to the requested records?**

OPRA provides that:

“...government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, *with certain exceptions...*” (Emphasis added.) N.J.S.A. 47:1A-1.

Additionally, OPRA defines a government record as:

“... any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been *made, maintained or kept on file ... or that has been received* in the course of his or its official business ...” (Emphasis added.) N.J.S.A. 47:1A-1.1.

OPRA places the onus on the Custodian to prove that a denial of access is lawful. Specifically, OPRA states:

“...[t]he public agency shall have the burden of proving that the denial of access is authorized by law...” N.J.S.A. 47:1A-6.

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

Based on the conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts to determine whether the custodian unlawfully denied access, and if so, for a further determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

## Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that based on the conflicting evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts to determine whether the custodian unlawfully denied access, and if so, for a further determination of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances.

Prepared By:

Dara Lownie  
Senior Case Manager

Approved By:

Catherine Starghill, Esq.  
Executive Director

November 21, 2007