



**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**

**May 28, 2008 Government Records Council Meeting**

Corry Morris  
Complainant

Complaint No. 2007-160

v.

Trenton Police Department  
Custodian of Record

At the May 28, 2008 public meeting, the Government Records Council (“Council”) considered the May 21, 2008 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. While the Custodian’s denial of the Complainant’s OPRA request was within the time allowed by N.J.S.A. 47:1A-5.i., the Custodian’s failure to supply the Complainant with a detailed lawful basis for denial violates N.J.S.A. 47:1A-5.g.
2. Because the Complainant’s OPRA request did not specify an identifiable government record but instead sought information, the Complainant’s OPRA request is invalid. Mag Entertainment LLC. V. Div. of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005).
3. Although the Custodian violated OPRA by failing to provide a detailed legal basis for the denial of access, the Complainant’s OPRA request is invalid pursuant to Mag Entertainment LLC. V. Div. of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005). Therefore, it is concluded that the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian’s failure to supply the Complainant with a detailed lawful basis for the denial of access appears negligent and heedless since he is vested with the legal responsibility of providing the Complainant with a detailed lawful basis for denial.



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 28<sup>th</sup> Day of May, 2008

Robin Berg Tabakin, Chairman  
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: June 5, 2008**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
May 28, 2008 Council Meeting**

**Corey Morris<sup>1</sup>  
Complainant**

**GRC Complaint No. 2007-160**

v.

**Trenton Police Department<sup>2</sup>  
Custodian of Records**

**Records Relevant to Complaint:**

1. The name and title of the Commander who was in charge of supervising the Trenton Police Station on July 11, 2002 between 9:00 am and 5:00 pm.
2. The name, title and division of the person that administered the oath for Complainant's July 11, 2002 warrant.
3. Name, title, position and Department of the officer who administered the oath for Complainant's July 11, 2002 warrant.

**Request Made:** June 18, 2007

**Response Made:** June 27, 2007

**Custodian:** Lt. DeHart

**GRC Complaint Filed:** July 12, 2007

**Background**

**June 18, 2007**

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

**June 25, 2007**

OPRA request received by Custodian.<sup>3</sup>

**June 27, 2007**

Custodian's Response to the OPRA request. The Custodian responded in writing to the Complainant's OPRA request on the second (2<sup>nd</sup>) business day following receipt of the request. The Custodian states that access to the requested record is denied. No reason for the denial of access is provided.

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

<sup>2</sup> Represented by Peter Tober, Esq., of Shain, Schaffer & Rafanello, P.C. (Bernardsville, NJ).

<sup>3</sup> The Custodian certified in the Statement of Information that Complainant's request was received on June 25, 2007. The Custodian's assertion was not challenged by the Complainant.

**July 12, 2007**

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

- Complainant’s OPRA request dated June 18, 2007
- Copy of OPRA request form with DENIED stamped on it
- Copy of time stamped envelope with date of mailing and date of receipt by Complainant
- Copy of Warrant # W-2002-000372-111
- Cover letter from Complainant to GRC

**July 12, 2007**

Offer of Mediation sent to both parties.

**July 20, 2007**

Neither the Complainant nor Custodian responds to the Offer of Mediation.

**August 1, 2007**

Request for the Statement of Information sent to the Custodian.

**August 2, 2007**

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

- Complainant’s OPRA request dated June 18, 2007
- Letter from Custodian to GRC dated August 1, 2007

The Custodian certified that no record exists that is responsive to the Complainant’s request. The Custodian also asserted that Complainant’s request is for information and not documentation.

**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 also provides that:

“[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefore on the request form and promptly return it to the requestor. The custodian shall sign and date the form and provide the requestor with a copy thereof ...” N.J.S.A. 47:1A-5.g.

OPRA further provides that:

“[u]nless a shorter time period is otherwise provided by statute, regulation, or executive order, a custodian of a government record shall grant access ... or deny a request for access ... as soon as possible, but *not later than seven business days after receiving the request* ... In the event a custodian fails to respond within seven business days after receiving a request, *the failure to respond shall be deemed a denial of the request* ...” (Emphasis added.) N.J.S.A. 47:1A-5.i.

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. 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.

GRC decisions have consistently reinforced the statutory mandate that custodians provide a legally valid reason for any denial of records. Id. The custodians are also charged with communicating that reason to the requester. Id. The Custodian’s counsel in Joseph E. Murray v. Township of Warren GRC Complaint No. 2006-169 (February 2008), asserted that a custodian does not need to supply a detailed reason for a denial of access. Murray, supra. This assertion is erroneous. N.J.S.A. 47:1A-5.g provides that “[i]f the custodian is unable to comply with a request for access, the Custodian ... shall indicate the *specific* basis...(Emphasis added).” Additionally, N.J.S.A. 47:1A-6 places the “burden of proving that the denial of access is authorized by law” on the custodian. In order to comply with OPRA, the statute is clear that a denial must be specific and must be sufficient to prove that a custodian’s denial is authorized by OPRA. Id.; See also, Martin O’Shea v. Township of Fredon, GRC Complaint No. 2007-251 (February 2008).

Therefore, while the Custodian's denial of the Complaint's request was within the time allowed by N.J.S.A. 47:1A-5.i, the Custodian's failure to supply the requester with a detailed lawful basis for denial violates N.J.S.A. 47:1A-5.g.

However, the Complaint's June 18, 2007 OPRA request sought data or information rather than an identifiable record. The New Jersey Superior Court has 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.) Mag Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super 534, 546 (App. Div. 2005). 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." (Emphasis added.) *Id.* at 549.

Further, in Bent v. Stafford Police Department, 381 N.J. Super 30, 37 (App. Div. 2005), the Superior Court references Mag in that the Court held that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records "accessible.

Because the Complainant's OPRA request did not specify an identifiable government record but instead sought information, the Complainant's OPRA request is invalid. Mag Entertainment LLC. V. Div. of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div 2005).

**Whether the Custodian's failure to provide the Complainant with a detailed lawful basis for denial rises to the level of a knowing and willful violation of OPRA under the totality of the circumstances?**

OPRA states that:

"[a] public official, officer, employee or custodian who knowingly or willfully violates [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, shall be subject to a civil penalty ..." N.J.S.A. 47:1A-11.a.

OPRA allows the Council to determine a knowing and willful violation of the law and unreasonable denial of access under the totality of the circumstances. Specifically OPRA states:

"... If the council determines, by a majority vote of its members, that a custodian has knowingly and willfully violated [OPRA], and is found to have unreasonably denied access under the totality of the circumstances, the council may impose the penalties provided for in [OPRA]..." N.J.S.A. 47:1A-7.e

Certain legal standards must be considered when making the determination of whether the Custodian's actions rise to the level of a "knowing and willful" violation of OPRA. The following statements must be true for a determination that the Custodian "knowingly and willfully" violated OPRA: the Custodian's actions must have been much more than negligent conduct (Alston v. City of Camden, 168 N.J. 170 at 185 (2001)); the Custodian must have had some knowledge that his actions were wrongful (Fielder v. Stonack, 141 N.J. 101, 124 (1995)); the Custodian's actions must have had a positive element of conscious wrongdoing (Berg v. Reaction Motors Div., 37 N.J. 396, 414 (1962)); the Custodian's actions must have been forbidden with actual, not imputed, knowledge that the actions were forbidden (Berg); the Custodian's actions must have been intentional and deliberate, with knowledge of their wrongfulness, and not merely negligent, heedless or unintentional (ECES v. Salmon, 295 N.J. Super. 86 (App. Div. 1996) at 107).

Although the Custodian violated OPRA by failing to provide a detailed legal basis for the denial of access, the Complainant's OPRA request is invalid pursuant to Mag, *supra*, and Bent, *supra*. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's failure to supply the Complainant with a detailed lawful basis for the denial of access appears negligent and heedless since he is vested with the legal responsibility of providing the Complainant with a detailed lawful basis for denial.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. While the Custodian's denial of the Complainant's OPRA request was within the time allowed by N.J.S.A. 47:1A-5.i., the Custodian's failure to supply the Complainant with a detailed lawful basis for denial violates N.J.S.A. 47:1A-5.g.
2. Because the Complainant's OPRA request did not specify an identifiable government record but instead sought information, the Complainant's OPRA request is invalid. Mag Entertainment LLC. V. Div. of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005).
3. Although the Custodian violated OPRA by failing to provide a detailed legal basis for the denial of access, the Complainant's OPRA request is invalid pursuant to Mag Entertainment LLC. V. Div. of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005). Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. However, the Custodian's failure to supply the Complainant with a detailed lawful basis for the denial of access appears negligent and

heedless since he is vested with the legal responsibility of providing the Complainant with a detailed lawful basis for denial.

Prepared By:

Sherin Keys, Esq.  
Case Manager

Approved By:

Catherine Starghill, Esq.  
Executive Director

May 21, 2008