



State of New Jersey
GOVERNMENT RECORDS COUNCIL

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DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

FINAL DECISION

December 18, 2008 Government Records Council Meeting

Dale Baranoski
Complainant

Complaint No. 2007-268

v.

Township of Hamilton (Mercer)
Custodian of Record

At the December 18, 2008 public meeting, the Government Records Council (“Council”) considered the December 10, 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, finds that because the Custodian lawfully redacted the information contained on the arrest reports which is not expressly disclosable pursuant to N.J.S.A. 47:1A-3.b. and N.J.S.A. 47:1A-1.1., and provided the Complainant with such lawfully redacted copies of the requested arrest reports, and provided certified confirmation of compliance, pursuant to N.J. Court Rule 1:4-4, to the Executive Director within five (5) business days of receiving the Council’s February 27, 2008 Interim Order, as extended, the Custodian has complied with Council’s May 28, 2008 Interim Order.

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 18th Day of December, 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: December 22, 2008

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
December 18, 2008 Council Meeting**

**Dale Baranoski¹
Complainant**

GRC Complaint No. 2007-268

v.

**Township of Hamilton (Mercer)²
Custodian of Records**

Records Relevant to Complaint: Any and all documents and reports regarding or relating to Michael A. Fisher, D.O.B. 1-18-1983, such as, but not limited to, police investigation reports, supplemental reports, incident reports, accident reports, motor vehicle offenses and arrest reports. Fisher had arrests through the court on April 6, 2002 and September 29, 2002 and others may exist.

Request Made: September 28, 2007

Response Made: October 3, 2007

Custodian: Jean Chianese³

GRC Complaint Filed: November 1, 2007

Background

May 28, 2008

Government Records Council's ("Council") Interim Order. At its May 28, 2008 public meeting, the 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, found that:

1. The Custodian complied with the provisions of N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i by providing a written response to the Complainant's request releasing one (1) motor vehicle accident report and denying access to all other government records within seven (7) business days of receiving Complainant's OPRA request.
2. Because the Complainant's request was overly broad and not for specific identifiable records, and because agencies are required to disclose only identifiable government records not otherwise exempt pursuant to the Superior Court's decisions in MAG Entertainment, LLC v. Division of

¹ No legal representation listed on record.

² Represented by Paul R. Adezio, Esq., of Hamilton Township Department of Law (Hamilton, NJ).

³ Municipal Clerk, Township of Hamilton.

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), the Custodian has lawfully denied the Complainant access to the requested records and has met her burden of proof that access to the requested records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6.

3. The two (2) arrest reports on Michael A. Fisher dated April 6, 2002 and September 29, 2002 shall be released with appropriate redactions pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-3.b and the Council's decision in Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (February 2008). Because at the time of the request the GRC held that an arrest report was a criminal investigatory record exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, the Custodian did not violate OPRA by failing to disclose these records at that time.
4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**

June 5, 2008

Council's Interim Order distributed to the parties.

June 13, 2008

Submission from the Township of Hamilton Police Chief to the GRC. The Chief of Police forwards to the GRC a certification in which he avers compliance with the Council's Interim Order dated May 28, 2008. The Police Chief also forwards the two (2) arrest reports on Michael A. Fisher dated April 6, 2002 and September 29, 2002 along with a redaction index which indicates the arrest reports are redacted as follows (each number corresponds to a numbered block on the arrest report):

Arrest Report dated April 6, 2002:

8. Date of birth pursuant to N.J.S.A. 47:1A-3 (age disclosed)
9. Social security number pursuant to N.J.S.A. 47:1A-1.1.
11. Home telephone number pursuant to N.J.S.A. 47:1A-1.1.
12. Employer/school pursuant to N.J.S.A. 47:1A-3 (occupation disclosed)
14. Business telephone number pursuant to N.J.S.A. 47:1A-1.1.
15. Business address pursuant to N.J.S.A. 47:1A-3.
16. Height pursuant to N.J.S.A. 47:1A-3.
17. Weight pursuant to N.J.S.A. 47:1A-3.
30. Alias pursuant to N.J.S.A. 47:1A-3.
32. Driver's License number pursuant to N.J.S.A. 47:1A-1.1.
33. Scars/marks/tattoos pursuant to N.J.S.A. 47:1A-3.
34. Incident location pursuant to N.J.S.A. 47:1A-3.
41. Offense date pursuant to N.J.S.A. 47:1A-3.

52. Information not surrounding the immediate circumstances of arrest pursuant to N.J.S.A. 47:1A-3.

Arrest Report dated September 29, 2002:

8. Date of birth pursuant to N.J.S.A. 47:1A-3 (age disclosed)
9. Social security number pursuant to N.J.S.A. 47:1A-1.1.
11. Home telephone number pursuant to N.J.S.A. 47:1A-1.1.
12. Employer/school pursuant to N.J.S.A. 47:1A-3 (occupation disclosed)
14. Business telephone number pursuant to N.J.S.A. 47:1A-1.1.
15. Business address pursuant to N.J.S.A. 47:1A-3.
16. Height pursuant to N.J.S.A. 47:1A-3.
17. Weight pursuant to N.J.S.A. 47:1A-3.
30. Alias pursuant to N.J.S.A. 47:1A-3.
32. Driver's License number pursuant to N.J.S.A. 47:1A-1.1.
33. Scars/marks/tattoos pursuant to N.J.S.A. 47:1A-3.
34. Incident location pursuant to N.J.S.A. 47:1A-3.
41. Offense date pursuant to N.J.S.A. 47:1A-3.
44. Address/telephone number pursuant to N.J.S.A. 47:1A-1.1 and N.J.S.A. 47:1A-3. (Name also withheld due to the safety of the individual and the nature of the charge).

June 18, 2008

Facsimile transmission from the GRC to the Custodian. Because it is not clear whether copies of the redacted arrest reports were provided to the Complainant simultaneously with the submission to the GRC, the GRC asks the Custodian to provide a certification that said records were disclosed to the Complainant.

June 19, 2008

Telephone call from the Custodian to the GRC. The Custodian states that she was under the impression that the records ordered for disclosure to the Complainant were to be forwarded to the Complainant via the GRC. The GRC informs the Custodian that her impression is wrong and that she must deliver the records directly to the Complainant and provide the GRC with a certification of compliance with the May 28, 2008 Interim Order. The GRC grants an extension of time until June 20, 2008 for the Custodian to comply with the Council's May 28, 2008 Interim Order.

June 19, 2008

Letter from the Custodian to the GRC. The Custodian confirms her earlier telephone conversation with the GRC and certifies that the redacted records have been disclosed to the Complainant via e-mail and first class certified mail pursuant to the Council's May 28, 2008 Interim Order.

Analysis

Whether the Custodian complied with the Council's May 28, 2008 Interim Order?

In this matter, the Council ordered the Custodian to release redacted copies of the requested arrest reports pursuant to N.J.S.A. 47:1A-3.b.

N.J.S.A. 47:1A-3.b. provides that:

“[i]f an arrest has been made ... [the following information shall be made available to the public] ... the defendant’s name, age, residence, occupation, marital status and similar background information and the identity of the complaining party...the text of any charges...the identity of the investigating and arresting personnel and agency...the time and place of arrest...and information as to circumstances surrounding bail, whether it was posted and the amount thereof.” N.J.S.A. 47:1A-3.b.

Further, N.J.S.A. 47:1A-1.1. provides that:

“[a] government record shall not include...that portion of any document which discloses the social security number, credit card number, unlisted telephone number or driver license number of any person...”

Based on the Custodian’s Certification dated June 19, 2008, in which she incorporates the Police Chief’s certification dated June 13, 2008 wherein the Police Chief identified the information he redacted from the arrest reports, as well as the GRC’s examination of the redacted arrest reports, it is concluded that the redacted information is not information which is subject to disclosure pursuant to N.J.S.A. 47:1A-3.b. and/or N.J.S.A. 47:1A-1.1. Thus, the Custodian has lawfully redacted the information contained on the arrest reports

Therefore, because the Custodian lawfully redacted the information contained on the arrest reports which is not expressly disclosable pursuant to N.J.S.A. 47:1A-3.b. and N.J.S.A. 47:1A-1.1., and provided the Complainant with such lawfully redacted copies of the requested arrest reports, and provided certified confirmation of compliance, pursuant to N.J. Court Rule 1:4-4, to the Executive Director within five (5) business days of receiving the Council’s February 27, 2008 Interim Order, as extended, the Custodian has complied with Council’s May 28, 2008 Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because the Custodian lawfully redacted the information contained on the arrest reports which is not expressly disclosable pursuant to N.J.S.A. 47:1A-3.b. and N.J.S.A. 47:1A-1.1., and provided the Complainant with such lawfully redacted copies of the requested arrest reports, and provided certified confirmation of compliance, pursuant to N.J. Court Rule 1:4-4, to the Executive Director within five (5) business days of receiving the Council’s February 27, 2008 Interim Order, as extended, the Custodian has complied with Council’s May 28, 2008 Interim Order.

Prepared By: John E. Stewart
Case Manager/*In Camera* Attorney

Approved By: Catherine Starghill, Esq.
Executive Director

December 10, 2008



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GOVERNMENT RECORDS COUNCIL

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COMMISSIONER LUCILLE DAVY
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

INTERIM ORDER

May 28, 2008 Government Records Council Meeting

Dale Baranoski
Complainant

Complaint No. 2007-268

v.

Township of Hamilton (Mercer)
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. The Custodian complied with the provisions of N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i by providing a written response to the Complainant’s request releasing one (1) motor vehicle accident report and denying access to all other government records within seven (7) business days of receiving Complainant’s OPRA request.
2. Because the Complainant’s request was overly broad and not for specific identifiable records, and because agencies are required to disclose only identifiable government records not otherwise exempt pursuant to the Superior Court’s decisions in MAG Entertainment, LLC v. Division 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), the Custodian has lawfully denied the Complainant access to the requested records and has met her burden of proof that access to the requested records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6.
3. The two (2) arrest reports on Michael A. Fisher dated April 6, 2002 and September 29, 2002 shall be released with appropriate redactions pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-3.b and the Council’s decision in Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (February 2008). Because at the time of the request the GRC held that an arrest report was a criminal investigatory record exempt from disclosure pursuant to N.J.S.A.



47:1A-1.1, the Custodian did not violate OPRA by failing to disclose these records at that time.

4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**

Interim Order Rendered by the
Government Records Council
On The 28th 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**

**Dale Baranoski¹
Complainant**

GRC Complaint No. 2007-268

v.

**Township of Hamilton (Mercer)²
Custodian of Records**

Records Relevant to Complaint: Any and all documents and reports regarding or relating to Michael A. Fisher, D.O.B. 1-18-1983, such as, but not limited to, police investigation reports, supplemental reports, incident reports, accident reports, motor vehicle offenses and arrest reports. Fisher had arrests through the court on April 6, 2002 and September 29, 2002 and others may exist.

Request Made: September 28, 2007

Response Made: October 3, 2007

Custodian: Jean Chianese³

GRC Complaint Filed: November 1, 2007

Background

September 28, 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.

October 3, 2007

Memorandum from the Hamilton Police Department to the Custodian. The Police Department forwarded a motor vehicle accident report and informed the Custodian that the other reports responsive to the Complainant's request are not disclosable.

October 3, 2007

Custodian's Response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the third (3rd) business day following receipt of such request. The Custodian states that the police investigative reports are not obtainable through an OPRA request and that driver abstracts are available through the New Jersey Motor Vehicle Commission. The Custodian released a copy of a motor vehicle accident report involving Michael Fisher to the Complainant.

¹ No legal representation listed on record.

² Represented by Paul R. Adezio, Esq., of Hamilton Township Department of Law (Hamilton, NJ).

³ Municipal Clerk, Township of Hamilton.

October 12, 2007

E-mail from the Complainant to the GRC. The Complainant informs the GRC that he filed an OPRA request with the Custodian dated September 28, 2007 and that he received a denial of his request from the Custodian on October 3, 2007. The Complainant advises the GRC that he intends to inform the Custodian that she violated the release rules.

October 12, 2007

Faxed correspondence from the Complainant to the Custodian. The Complainant acknowledged the Custodian's response to his OPRA request and states that she has unlawfully denied him access to the requested records based upon Executive Order ("E.O.") 123.

October 12, 2007

Letter from the Custodian to the Complainant. The Custodian acknowledged receipt of the Complainant's October 12, 2007 faxed correspondence and stated that she will refer the Complainant's concerns to the Hamilton Township Police Department and the Hamilton Township Department of Law.

October 15, 2007

Letter to the Complainant from the Custodian's Counsel. The Custodian's Counsel acknowledged receipt of the Complainant's October 12, 2007 faxed correspondence to the Custodian and informed the Complainant that the Custodian was correct in denying the Complainant access to the reports he requested because the Complainant's request was overly broad. The Custodian's Counsel also informed the Complainant that he may be able to cure his request if he resubmits it with more specificity.

October 31, 2007

Letter from the Complainant to the GRC. The Complainant states that this letter is intended as a Denial of Access Complaint.

November 1, 2007

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

- Complainant's OPRA request dated September 28, 2007
- Letter from the Custodian to the Complainant dated October 3, 2007
- Fax from the Complainant to the Custodian dated October 12, 2007
- Letter from the Custodian to the Complainant dated October 12, 2007
- Letter from the Complainant to the GRC dated October 31, 2007

The Complainant alleges that his complaint is valid and that GRC rules and previous decisions completely support his request. The Complainant states that the Custodian has improperly denied him access to the records responsive to his request. He further verifies that as of the date of his complaint, he has not received any records responsive to his request from the Custodian.

The Complainant contends that all of the records he has requested should be disclosed pursuant to E.O. 123.⁴ He suggests that the Custodian is in collusion with the Hamilton Police Department to avoid providing him with the records he has requested.

On the Denial of Access Complaint Records Denied list, the Complainant contends he made a second request “detailing the responsibilities and duties of the Custodian along with the supporting Executive Orders requiring release of requested documents submitted.” The Complainant does not provide a date for this request, but states that the second request was also denied by the Custodian.⁵

The Complainant also asserts that the Custodian, by intentionally obstructing the release of the requested documents, is brazenly perverting the OPRA process. The Complainant contends that the custodian has failed to respond to the Complainant’s OPRA request within the statutorily mandated seven (7) business days, and the Complainant wants the Custodian to undergo in-service training and to be instructed that criminal charges, to wit, N.J.S.A. 2C:30-2, may be filed against her.

November 2, 2007

E-mail from the GRC to the Complainant. The Complainant is advised that his Denial of Access Complaint was received via attachments to several different e-mails and that a compilation of those attachments was being forwarded to him so he could examine same and determine if the complaint was complete.

November 4, 2007

E-mail from the Complainant to the GRC. The Complainant forwarded a two (2) page narrative to add to his complaint so that it would be complete. The Complainant summarizes the content of correspondence between the Complainant and the Custodian.

November 5, 2007

Offer of Mediation sent to both parties. The Custodian agrees to mediation.

November 9, 2007

The Complainant declines mediation and requests that the GRC begin a full investigation of this complaint.

November 13, 2007

Request for the Statement of Information sent to the Custodian.

November 15, 2007

Letter from the Hamilton Township Department of Law to the Complainant. The Complainant is informed by the Director of the Hamilton Township Department of Law that the request is overly broad and therefore the Custodian is not required under OPRA

⁴ Although the Complainant does not specify which governor issued the E.O., only E.O. 123 issued by Governor Kean on November 12, 1985 is an E.O. so numbered which addresses access to government records. This E.O. was subsequently modified by E.O. 69 (Whitman) issued on May 15, 1997. The substance of E.O. 69 (Whitman) was later codified as N.J.S.A. 47:1A-3., addressing among other things the release to the public of arrest information.

⁵ This second OPRA request is not the subject of the present complaint.

to create records or to search for records that may or may not exist. The Complainant is advised to amend his complaint to be more specific in identifying the records he desires, and perhaps limit the OPRA request to the two (2) matters the Complainant identified as being prosecuted through the Municipal Court on April 6, 2002 and September 29, 2002. The Complainant is also advised that the Custodian, the Police Department and Municipal Court personnel have been asked by the Legal Department to determine if there are any records concerning arrest of the individual named in the Complainant's OPRA request on the dates provided by the Complainant.

November 16, 2007

E-mail from the Custodian to Municipal Court Director seeking arrest records for April 6, 2002 and September 29, 2002 for Michael A. Fisher.

November 19, 2007

Memorandum from the Hamilton Police Department to the Hamilton Department of Law. The Police Department forwarded arrest information for review by the legal staff and advised the Legal Department that they do not maintain conviction records.

November 19, 2007

Custodian's Statement of Information ("SOI"). The Custodian's SOI was non-compliant because it did not contain the records retention and disposition schedule for the records responsive to the Complainant's OPRA request included in the document index table.

November 20, 2007

E-mail from the Municipal Court Director to the Custodian. The Municipal Court Director informs the Custodian that the complaints for the arrests the Custodian is seeking have been transferred to the Mercer County Municipal Court.

November 20, 2007

Letter from the Hamilton Township Department of Law to the Complainant. The Complainant is informed by the Legal Department that the arrests records for April 6, 2002 and September 29, 2002 for Michael A. Fisher have been previously transferred from the Hamilton Police Department to the Mercer County Prosecutor's Office ("MCPO"). The Complainant is further advised to contact the MCPO regarding any additional information he requests about the two incidents.

November 21, 2007

Letter from the GRC to the Custodian. The Custodian's non-compliant SOI was returned to her with a request that the document index table be completed as described in the request for the SOI.

November 21, 2007

Letter from the Custodian to the GRC. This letter contains a statement that a motor vehicle accident report was provided to the Complainant as an attachment to the October 3, 2007 letter from the Custodian to the Complainant in response to the Complainant's OPRA request.

November 25, 2007

E-mail from the Complainant to the GRC. The Complainant takes issue with the two letters he received from the Hamilton Township Department of Law dated November 15, 2007 and November 20, 2007. He states that the letters in the aggregate do not offer an intelligent defense for denial of his OPRA request. The Complainant claims the Legal Department’s characterization of his request as overly broad is nonsense in light of the specificity with which his request was submitted.

November 26, 2007

Letter from the Custodian to the Complainant. The Custodian forwards to the Complainant the Memorandum from the Hamilton Police Department to the Hamilton Department of Law dated November 19, 2007, the e-mail from the Custodian to Municipal Court Director dated November 16, 2007 and the e-mail from the Municipal Court Director to the Custodian dated November 20, 2007

November 27, 2007

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

- Complainant’s OPRA request dated September 28, 2007
- Memorandum from the Hamilton Police Department to the Custodian dated October 3, 2007
- Letter from the Custodian to the Complainant dated October 3, 2007
- Letter from the Custodian to the Complainant dated October 12, 2007
- Letter from the Hamilton Township Department of Law to the Complainant dated November 15, 2007
- E-mail from the Custodian to Municipal Court Director dated November 16, 2007
- Memorandum from the Hamilton Police Department to the Hamilton Department of Law dated November 19, 2007
- E-mail from the Municipal Court Director to the Custodian dated November 20, 2007
- Letter from the Hamilton Township Department of Law to the Complainant dated November 20, 2007
- Letter from the Custodian to the GRC dated November 21, 2007
- Letter from the Custodian to the Complainant dated November 26, 2007

The Custodian certifies that her search for the requested records involved submitting a request to the Hamilton Township Police Department for retrieval of the records responsive to the Complainant’s request. The Custodian also contacted Hamilton Municipal Court personnel to locate records. The Custodian certifies that the records responsive to the request must be retained by the agency as follows prior to destruction in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management:

LIST OF ALL RECORDS RESPONSIVE TO COMPLAINANT’S OPRA REQUEST	LIST THE RECORDS RETENTION REQUIREMENTS AND DISPOSITION SCHEDULE FOR EACH RECORD RESPONSIVE TO COMPLAINANT’S
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	OPRA REQUEST
Arrest Files	Seventy-five (75) years
Arrest Files (Copy)	Upon final disposition of case
Arrest Listings	One (1) year after date of last entry
Daily Bulletin	One (1) year
Daily Statistical Sheet	One (1) year
Incident File – Criminal Report	Seventy-five (75) years
Incident Reports – Copies	One (1) year
Investigations Log Book	One (1) year after all cases are closed
Master Card File/Information Card File	Permanent
Motor Vehicle Abstract Log	Unknown (this is a DMV record)
Prosecutor’s Investigation Report	Sixty-five (65) years
Prosecutor’s Case Files	Sixty-five (65) years
Inter-Office memo from police department to legal department	Two (2) years
E-mail correspondence between municipal court and the Custodian	Two (2) years

The Custodian, in her Statement of Information, provides documentation indicating the Custodian’s staff provided the Complainant with a copy of a motor vehicle accident report on October 3, 2007. The Custodian denied the Complainant access to the balance of his request by informing him that the police investigative reports are not obtainable through an OPRA request and that driver abstracts are available through the New Jersey Motor Vehicle Commission.

The Statement of Information also included correspondence from the township’s Department of Law to the Complainant. By letter dated November 15, 2007, the Complainant was informed by the Legal Department that his overly broad request exceeds the scope of OPRA. The Complainant was advised that the Custodian is not required under OPRA to create records or to search for records that may or may not exist. The Legal Department cited Bent v. Township of Stafford, 381 N.J. Super. 534 (app. Div. 20005) and Janeczko v. N.J. Dept. of Law and Public Safety, GRC Complaint No. 2002-79 (June 2004) as authority for reaching that conclusion. The Legal Department recommended the Complainant amend his complaint to be more specific in identifying the records he is seeking. The Complainant was also advised that the Legal Department had asked the Custodian, the Police Department and Municipal Court personnel to determine if there are any records concerning arrest of the individual named in the Complainant’s OPRA request on the dates provided by the Complainant.

Subsequently, in a letter dated November 20, 2007, the Legal Department informed the Complainant that the arrest information he had requested through the court had been transferred to the MCPO and therefore that agency may have additional information responsive to the Complainant’s OPRA request. On November 26, 2007, the Custodian forwarded the Complainant a copy of the memorandum from the Hamilton Police Department to the Hamilton Department of Law dated November 19, 2007, wherein the Police Department listed arrest information on Michael A. Fisher for arrests occurring on April 6, 2002 and September 29, 2002. The information was limited to no more than that allowed pursuant to N.J.S.A. 47:1A-3.b.

November 27, 2007

E-mail from the GRC to the Complainant. The GRC forwards a copy of the Custodian's amended Statement of Information to the Complainant.

November 30, 2007

E-mail from the Complainant to the GRC. The Complainant states that he has read the amended Statement of Information and restates that the Custodian is clearly refusing to provide lawfully sought and releasable documents.

Analysis

Whether the Custodian responded to the Complainant's OPRA request in a timely manner?

OPRA provides that:

“[i]f the custodian is unable to comply with a request for access, the custodian shall indicate the specific basis therefor 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:

“Unless a shorter time period is provided...a custodian of a government record shall grant access to a government record or deny a request for access to a government record as soon as possible, but not later than *seven business days after receiving* the request ...” (Emphasis added.) N.J.S.A. 47:1A-5.i.

The Complainant's assertion that the Custodian's response to his September 28, 2007 OPRA request “was past the seven day rule” is not supported by the evidence of record. The Custodian is required to respond in writing granting or denying access to the Complainant's OPRA request within seven (7) business days of receiving the request pursuant to N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i. The evidence reveals the Custodian received the request via facsimile transmission on September 28, 2007 and responded by letter dated October 3, 2007, wherein she forwarded one copy of a motor vehicle accident report and denied access to the remainder of the Complainant's OPRA request. The Complainant confirms in his e-mail to the GRC dated October 12, 2007 that the Custodian's denial of his OPRA request was in fact dated October 3, 2007. The Custodian therefore responded to the Complainant's OPRA request on the third (3rd) business day following receipt of such request.

The Custodian complied with the provisions of N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i by providing a written response to the Complainant's request releasing one motor vehicle accident report and denying access to all other government records within seven (7) business days of receiving Complainant's OPRA request.

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-1.1.

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 ...” N.J.S.A. 47:1A-1.1.

OPRA also provides:

“[i]f an arrest has been made [the following information shall be made available to the public] the defendant’s name, age, residence, occupation, marital status and similar background information and the identity of the complaining party...the text of any charges...the identity of the investigating and arresting personnel and agency...the time and place of arrest...and information as to circumstances surrounding bail, whether it was posted and the amount thereof.” N.J.S.A. 47:1A-3.b.

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. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

The Complainant’s request seeks “*any and all documents and reports regarding or relating to Michael A. Fisher...such as, but not limited to [numerous different types of reports].*” (Emphasis added). Such a request encompasses every record in the municipality even tangentially connected to one Michael A. Fisher. The Complainant’s criteria would require the Custodian to conduct an extensive search of records in order to find reports which may be responsive to the Complainant’s request.

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 when the Court held that a requestor must specifically describe the document sought because OPRA operates to make *identifiable* government records "accessible." (Emphasis added) "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired..."

In the instant complaint, the Complainant failed to specify with reasonable clarity the records desired and consequently has propounded an excessively broad and vague request. Accordingly, with the exception of the two (2) dated arrest reports discussed *infra*, the Complainant's request was overly broad.

Because the Complainant's request was overly broad and not for specific identifiable records, and because agencies are required to disclose only identifiable government records not otherwise exempt pursuant to the Superior Court's decisions in MAG and Bent, *supra*, the Custodian had no lawful duty to respond to the Complainant's invalid OPRA request and has met her burden of proof that access to the requested records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6.

With respect to the two (2) requested police arrest reports, despite the Complainant's overly broad request, the GRC finds that the two (2) arrest reports have been described in the Complainant's request with sufficient specificity to render them disclosable under OPRA. The Complainant has named the arresting agency and has described the type of report, the arrestee, the arrestee's date of birth and the dates of the two arrests. In fact, the Township Legal Department was able to separate this information out of the Complainant's otherwise overly broad request, and in its November 15, 2007 letter to the Complainant, the Legal Department advised the Complainant that they had asked the Custodian, the Police Department and Municipal Court personnel to determine if there are any records concerning arrest of the individual named in the Complainant's OPRA request on the dates provided by the Complainant.

The Township Police Department located records dated April 6, 2002 and September 29, 2002 containing arrest information for Michael A. Fisher. They extracted from those records the information required to be released pursuant to N.J.S.A. 47:1A-3.b and created a separate memorandum dated November 19, 2007 which contained said information. A copy of the memorandum was subsequently released to the Complainant.

Although specific arrest information must be disclosed, the Custodian is under no duty to extract and synthesize such information from government records in order to

comply with the provisions of OPRA. The Superior Court made this clear in MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534, by noting “[OPRA] is not intended as a research tool...to force government officials to identify and siphon useful information.” *Id.* at 546. Accordingly, pursuant to OPRA, this information must be disclosed in the form of a *government record* (emphasis added). 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.

Although the Council has previously found that police arrest reports are criminal investigatory records that are not disclosable under OPRA, *see Vercammen v. City of Plainfield*, GRC Complaint No. 2002-109 (March 2004) and Lanosga v. Borough of Princeton, GRC Complaint No. 2004-37 (June 2004), the GRC recently revisited the applicability of OPRA to police arrest reports and determined that because arrest reports are government records pursuant to N.J.S.A. 47:1A-1.1 and because N.J.S.A. 47:1A-3.b. delineates the specific information contained on an arrest report which must be disclosed to the public, a custodian shall disclose such reports to a requestor with appropriate redactions, including a detailed document index explaining the legal basis for each redaction. *See Bart v. City of Passaic (Passaic)*, GRC Complaint No. 2007-162 (February 2008).

Accordingly, the two (2) arrest reports on Michael A. Fisher dated April 6, 2002 and September 29, 2002 shall be released with appropriate redactions pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-3.b. and the Council’s decision in Bart, *supra*. Because at the time of the request the GRC held that an arrest report was a criminal investigatory record exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, the Custodian did not violate OPRA by failing to disclose these records at that time.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian complied with the provisions of N.J.S.A. 47:1A-5.g and N.J.S.A. 47:1A-5.i by providing a written response to the Complainant’s request releasing one (1) motor vehicle accident report and denying access to all other government records within seven (7) business days of receiving Complainant’s OPRA request.
2. Because the Complainant’s request was overly broad and not for specific identifiable records, and because agencies are required to disclose only identifiable government records not otherwise exempt pursuant to the Superior Court’s decisions in MAG Entertainment, LLC v. Division 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), the Custodian had no lawful duty to respond to the Complainant’s invalid OPRA request and has met her burden of proof that access to the requested records was not unlawfully denied pursuant to N.J.S.A. 47:1A-6.

3. The two (2) arrest reports on Michael A. Fisher dated April 6, 2002 and September 29, 2002 shall be released with appropriate redactions pursuant to N.J.S.A. 47:1A-1.1, N.J.S.A. 47:1A-3.b and the Council's decision in Bart v. City of Passaic (Passaic), GRC Complaint No. 2007-162 (February 2008). Because at the time of the request the GRC held that an arrest report was a criminal investigatory record exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1, the Custodian did not violate OPRA by failing to disclose these records at that time.

4. **The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.**

Prepared By:

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Approved By:

Catherine Starghill, Esq.
Executive Director

May 21, 2008