



## State of New Jersey

GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET

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TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

LORI GRIFA  
*Commissioner*

### FINAL DECISION

#### March 29, 2011 Government Records Council Meeting

Michael Crook  
Complainant

Complaint No. 2010-92

v.

Atlantic County Prosecutor's Office  
Custodian of Record

At the March 29, 2011 public meeting, the Government Records Council ("Council") considered the March 22, 2011 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 requested autopsy, toxicology, investigative and police records are exempt from disclosure under OPRA as criminal investigatory records, the Custodian has borne his burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Brewer v. NJ Department of Law and Public Safety, Division of NJ State Police, GRC Complaint Number 2006-204 (October 2007); McCrone (The Trenton Times) v. Burlington County Prosecutor's Office, GRC Complaint No. 2005-146 (November 2005).

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

Final Decision Rendered by the  
Government Records Council  
On The 29<sup>th</sup> Day of March, 2011

Robin Berg Tabakin, Chair  
Government Records Council



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

Charles A. Richman, Secretary  
Government Records Council

**Decision Distribution Date: April 1, 2011**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 29, 2011 Council Meeting**

**Michael Crook<sup>1</sup>  
Complainant**

**GRC Complaint No. 2010-92**

v.

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

**Records Relevant to Complaint:** Via fax or U.S. mail, copies of:

1. Autopsy and toxicology reports for David S. Cope, who died on December 14, 2009;
2. Police reports and investigative reports from December 14, 2009 pertaining to the investigation of a request for a welfare check made by Galloway Township to Hamilton Township; as well as the subsequent discovery of Cope's body, any reports pertaining to that discovery and investigation, including but not limited to the discovery of drugs whether prescription or otherwise, near his person, on his person or within his body;
3. Police and investigative reports pertaining to any arrest or detainment of Cope by any law enforcement agency for any crime, motor vehicle violation, or infraction, including, but not limited to, DWI, between September 1, 2009 and December 14, 2009.

**Request Made:** March 10, 2010

**Response Made:** March 19, 2010

**Custodian:** Cary Shill

**GRC Complaint Filed:** April 28, 2010<sup>3</sup>

**Background**

**March 10, 2010**

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.

**March 19, 2010<sup>4</sup>**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the seventh (7<sup>th</sup>) business day following receipt of such

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

<sup>2</sup> Represented by Emily Bell, Esq., of the Atlantic County Prosecutor's Office (Mays Landing, NJ).

<sup>3</sup> The GRC received the Denial of Access Complaint on said date.

<sup>4</sup> Although the cover page of the Custodian's response is dated March 19, 2009, the evidence of record indicates this was an error and the response was actually made March 19, 2010.

request. The Custodian states that access to the requested records is denied because the requested records are exempt from disclosure under OPRA as criminal investigatory records pursuant to N.J.S.A. 47:1A-1.1. The Custodian states that pursuant to N.J.S.A. 47:1A-3.a., public access to records which pertain to an investigation in progress by any public agency may be denied if inspection, copying, or examination of such records shall be inimical to the public interest. The Custodian maintains that this matter is an open investigation and that release of the records to the public has the potential to harm the investigation.

**April 28, 2010**

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

- Complainant’s OPRA request dated March 19, 2010
- Letter from the Custodian to the Complainant dated March 2010

The Complainant does not make any assertions in support of his complaint. The Complainant agrees to mediate this complaint.

**May 7, 2010**

Offer of Mediation sent to the Custodian.<sup>5</sup>

**May 17, 2010**

Request for the Statement of Information (“SOI”) sent to the Custodian.

**May 25, 2010**

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 May 17, 2010 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.

**May 26, 2010**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated March 10, 2010
- Letter from the Custodian to the Complainant dated March 19, 2010

The Custodian certifies that the requested records must be permanently retained by the agency pursuant to the records retention schedules promulgated by the New Jersey Department of Archives and Records Management (“DARM”).

The Custodian certifies that the Complainant requested autopsy and toxicology reports, as well as other records not contained in agency files. The Custodian certifies that she reviewed the file to determine whether the requested records were located in the file and determined that the file contained an autopsy report and toxicology report for Mr. Cope. The Custodian certifies that office personnel reviewed the agency files and were unable to locate

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<sup>5</sup> The Custodian failed to respond to the offer of mediation.

the other requested records. The Custodian certifies that on March 10, 2010, the Atlantic County Prosecutor's Office ("ACPO") received the Complainant's OPRA request. The Custodian also certifies that upon reviewing this request, he contacted Atlantic County Prosecutor, Theodore Housel, to determine the status of the case. The Custodian further certifies that he was advised that David Cope was found deceased in his residence on December 14, 2009, and that the Prosecutor's Office was still in the process of investigating the circumstances of his death.

The Custodian certifies that as of May 26, 2010, the investigation into the death of Mr. Cope remains an ongoing investigation. The Custodian certifies that the release of the requested records has the potential to be harmful to the investigation, and as such, the records are exempt from disclosure pursuant to N.J.S.A. 47:1A-3.

### **May 26, 2010**

The Complainant's response to the Custodian's SOI. The Complainant asserts that Mr. Cope was found dead in December 2009 and that he was given information by an employee of the Hamilton Township Police Department that Cope's body was found near a large amount of drugs. The Complainant states that he published this information on his blog and that this information has therefore been disclosed by an agent of the Hamilton Township Police Department.

The Complainant asserts that based on the information he was given, Mr. Cope's death is essentially a suicide. The Custodian asserts that the ACPO is working in collusion with the Galloway Township and Hamilton Township Police Departments in an effort to fraudulently protect a police officer from disclosure of embarrassing and uncomfortable truths. The Complainant requests the opportunity for a hearing so that the ACPO will be compelled to show that there is truly an open criminal investigation.

### **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 ...[a] government record shall not include the following information which is deemed to be confidential ... criminal investigatory records[.]" (Emphasis added). N.J.S.A. 47:1A-1.1.

Furthermore, OPRA provides that:

“... [W]here it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by any public agency, the right of access provided for in [OPRA]... may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to allow any public agency to prohibit access to a record of that agency that was open for public inspection, examination, or copying before the investigation commenced....” N.J.S.A. 47:1A-3.a.

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.

In the instant matter, the Complainant requested autopsy and toxicology reports, as well as police and investigation reports surrounding the death of David S. Cope. The Custodian argues that these records are criminal investigatory records which are exempt from the definition of a government record pursuant to N.J.S.A. 47:1A-1.1., and are also exempt from disclosure pursuant to N.J.S.A. 47:1A-3.a., which provides that public access to records which pertain to an investigation in progress by any public agency may be denied if inspection, copying, or examination of such records shall be inimical to the public interest.

Criminal investigatory records are defined in OPRA as those records which are not required by law to be made, maintained or kept on file and which are held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding. N.J.S.A. 47:1A-1.1. Those records which fall under this definition are *excluded* from the public accessibility requirements that OPRA places upon government records. *Id.*

The status of records purported to fall under the criminal investigatory records exemption pursuant to N.J.S.A. 47:1A-1.1 was examined by the GRC in Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004), affirmed in an unpublished opinion of the Appellate Division of the New Jersey Superior Court in May 2004. In Janeczko, the complainant requested access to copies of records related to alleged criminal actions committed by her son, who was ultimately killed by police officers. The Council found that under OPRA, “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes information that is part and parcel of an investigation, confirmed and unconfirmed”. Consequently, the complainant’s request was denied.

It is important to note that the criminal investigatory records exemption continues to survive the conclusion of the investigation. As the Council pointed out in Janeczko, *supra*:

“[the criminal investigatory records exemption] does not permit access to investigatory records once the investigation is complete. The exemption applies to records that conform to the statutory description, without reference to the status of the investigation and the Council does not have a basis to withhold from access only currently active investigations and release those where the matter is resolved or closed.”

The finding in Janeczko concurs with the Council’s decision in Brewer v. NJ Department of Law and Public Safety, Division of NJ State Police, GRC Complaint Number 2006-204 (October 2007). In Brewer, the Complainant filed an OPRA request to obtain lab records that were in the custody of the New Jersey State Police for use in an investigation. The Council found that the requested records were part of a criminal investigative file and were exempt from disclosure under OPRA. Accordingly, the Council determined that the complainant’s request was lawfully denied.

The GRC has previously ruled in matters concerning request for autopsy reports. In McCrone (The Trenton Times) v. Burlington County Prosecutor’s Office, GRC Complaint No. 2005-146 (November 2005), the Complainant requested records pertaining to a fatal auto accident, which included an autopsy report. The Custodian responded, denying access to the requested autopsy record as a criminal investigatory record pursuant to N.J.S.A. 47:1A-1.1. The GRC held that the Custodian had borne his burden of proving that the denial of access was authorized by law pursuant to N.J.S.A. 47:1A-6.

In the instant complaint, as in Janeczko, the Complainant is requesting records that were used in the course of a police investigation; the Custodian has certified that the requested autopsy, toxicology, police and investigative reports remain part of an ongoing investigation.

Therefore, because the requested autopsy, toxicology, investigative and police reports are exempt from disclosure under OPRA as criminal investigatory records, the Custodian has borne his burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Brewer v. NJ Department of Law and Public Safety, Division of NJ State Police, GRC Complaint Number 2006-204 (October 2007); McCrone (The Trenton Times) v. Burlington County Prosecutor’s Office, GRC Complaint No. 2005-146 (November 2005).

Because the Council has determined that the Custodian did not unlawfully deny access to the requested records because they are criminal investigatory records which are exempt from the definition of a government record pursuant to N.J.S.A. 47:1A-1.1, the Council declines to address the issue of whether such records are also exempt from disclosure pursuant to N.J.S.A. 47:1A-3.a.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that because the requested autopsy, toxicology, investigative and police records are exempt from disclosure

under OPRA as criminal investigatory records, the Custodian has borne his burden of proof that the denial of access was lawful. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6; Janeczko v. NJ Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); Brewer v. NJ Department of Law and Public Safety, Division of NJ State Police, GRC Complaint Number 2006-204 (October 2007); McCrone (The Trenton Times) v. Burlington County Prosecutor's Office, GRC Complaint No. 2005-146 (November 2005).

Prepared By: Darryl C. Rhone  
Case Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

March 22, 2011