



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

September 25, 2012 Government Records Council Meeting

Wilfred Selby
Complainant

Complaint No. 2011-154

v.

Hazlet Township Police Department (Monmouth)
Custodian of Record

At the September 25, 2012 public meeting, the Government Records Council (“Council”) considered the September 18, 2012 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:

1. While the Custodian failed to timely provide the GRC’s Executive Director with a certification of compliance within the required five (5) business days, the Custodian did comply with the Council’s June 19, 2012 Interim Order’s requirement that the requested records be made available to the Complainant. The Complainant’s failure to retrieve the records has no bearing on the Custodian’s compliance with the Interim Order and therefore, by making the records available to the Complainant, the Custodian has been discharged of his duties under OPRA in this matter.
2. The Custodian initially unlawfully denied the Complainant access to the requested accident reports and therefore violated N.J.S.A. 39:4-131 and N.J.S.A. 47:1A-1. While the Custodian’s provision of his certification of compliance with the Council’s June 19, 2012 Interim Order to the Executive Director was untimely, the Custodian did make the records available to the Complainant as required. Accordingly, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. 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.

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 25th Day of September, 2012

Robin Berg Tabakin, Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: October 1, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
September 25, 2012 Council Meeting**

**Wilfred Selby¹
Complainant**

GRC Complaint No. 2011-154

v.

**Hazlet Township Police Department (Monmouth)²
Custodian of Records**

Records Relevant to Complaint:

Copies of motor vehicle accident reports from April 1, 2011 to April 24, 2011.

Request Made: April 26, 2011

Response Made: May 2, 2011

Custodian: Robert Cullen

GRC Complaint Filed: May 6, 2011³

Background

June 26, 2012

At its June 26, 2012 public meeting, the Government Records Council (“Council”) considered the June 19, 2012 Executive Director’s Findings and Recommendations and all related documents 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’s denial of access in response to the Complainant’s request for motor vehicle accident reports is in violation of N.J.S.A. 39:4-131 and N.J.S.A. 47:1A-1, as the Complainant has specifically identified government records that are subject to disclosure. Accordingly, the Complainant must disclose the requested records without redactions pursuant to N.J.S.A. 39:4-131, as motor vehicle accident reports “*shall not be privileged or held confidential.*” *Id. See Truland v. Borough of Madison (Morris)*, GRC Complaint No. 2006-88 (September 2007).

2. **The Custodian shall comply with item No. 1 above within five (5) business days from receipt of the Council’s Interim Order with**

¹ No legal representation listed on record.

² Represented by James Gorman, Esq. (Shrewsbury, NJ).

³ The GRC received the Denial of Access Complaint on said date.

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 1:4-4⁴, to the Executive Director.⁵

3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

June 27, 2012

Council's Interim Order distributed to the parties.

August 23, 2012

Custodian's certification of compliance. The Custodian certifies that he contacted the Complainant on May 20, 2011 by telephone and advised him the request was fulfilled and ready to be picked up at the office. The Custodian certifies that a representative of the Complainant came to the Hazlet Township Police Department to pick up the records but lacked sufficient funds to pay for the records. The Custodian certifies that the representative stated that he would return with the appropriate funds, but as of August 23, 2012, has yet to return to the Police Department.

Analysis

Whether the Custodian complied with the Council's July 19, 2012 Interim Order?

The Council's July 19, 2012 Interim Order specifically directed the Township Police Department to disclose the requested accident reports and provide certification of compliance to the GRC's Executive Director within five (5) business days. The Order was distributed by the Council on July 27, 2012. However, the Custodian did not provide the Council with certified confirmation of compliance until August 23, 2012, nineteen (19) business days following the distribution of the Council's Interim Order.

In the Custodian's August 23, 2012 certification of compliance, the Custodian certified that he contacted the Complainant on May 20, 2011 and informed him that the records were available. The Custodian further certified that the Complainant sent over a representative to retrieve the requested records, but the representative failed to offer sufficient funds to pay for the records. The Custodian certified that the representative stated that he would return with the necessary funds, but failed to do so.

⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁵ Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Accordingly, while the Custodian failed to timely provide the GRC's Executive Director with a certification of compliance within the required five (5) business days, the Custodian did comply with the Council's June 19, 2012 Interim Order's requirement that the requested records be made available to the Complainant. The Complainant's failure to retrieve the records has no bearing on the Custodian's compliance with the Interim Order and therefore, by making the records available to the Complainant, the Custodian has discharged his duties under OPRA in this matter.

Whether the Custodian's delay in access to the requested records and deficient OPRA request form rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access 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, 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, 107 (App. Div. 1996)).

Here the Custodian initially unlawfully denied the Complainant access to the requested accident reports and therefore violated N.J.S.A. 39:4-131 and N.J.S.A. 47:1A-1. While the Custodian's certification to the Executive Director of compliance with the Council's June 19, 2012 Interim Order was untimely, the Custodian did make the

records available to the Complainant as required. Accordingly, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. 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.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. While the Custodian failed to timely provide the GRC's Executive Director with a certification of compliance within the required five (5) business days, the Custodian did comply with the Council's June 19, 2012 Interim Order's requirement that the requested records be made available to the Complainant. The Complainant's failure to retrieve the records has no bearing on the Custodian's compliance with the Interim Order and therefore, by making the records available to the Complainant, the Custodian has been discharged of his duties under OPRA in this matter.
2. The Custodian initially unlawfully denied the Complainant access to the requested accident reports and therefore violated N.J.S.A. 39:4-131 and N.J.S.A. 47:1A-1. While the Custodian's provision of his certification of compliance with the Council's June 19, 2012 Interim Order to the Executive Director was untimely, the Custodian did make the records available to the Complainant as required. Accordingly, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. 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.

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

September 18, 2012



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

June 26, 2012 Government Records Council Meeting

Wilfred Selby
Complainant

Complaint No. 2011-154

v.

Hazlet Township Police Department (Monmouth)
Custodian of Record

At the June 26, 2012 public meeting, the Government Records Council ("Council") considered the June 19, 2012 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's denial of access in response to the Complainant's request for motor vehicle accident reports is in violation of N.J.S.A. 39:4-131 and N.J.S.A. 47:1A-1, as the Complainant has specifically identified government records that are subject to disclosure. Accordingly, the Complainant must disclose the requested records without redactions pursuant to N.J.S.A. 39:4-131, as motor vehicle accident reports "*shall not be privileged or held confidential.*" *Id. See Truland v. Borough of Madison (Morris)*, GRC Complaint No. 2006-88 (September 2007).
2. **The Custodian shall comply with item No. 1 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 1:4-4¹, to the Executive Director.²**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

² Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

Interim Order Rendered by the
Government Records Council
On The 26th Day of June, 2012

Steven F. Ritardi, Esq., Acting Chair
Government Records Council

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

Denise Parkinson Vetti, Secretary
Government Records Council

Decision Distribution Date: June 27, 2012

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 26, 2012 Council Meeting**

**Wilfred Selby¹
Complainant**

GRC Complaint No. 2011-154

v.

**Hazlet Township Police Department (Monmouth)²
Custodian of Records**

Records Relevant to Complaint:

Copies of motor vehicle accident reports from April 1, 2011 to April 24, 2011.

Request Made: April 26, 2011

Response Made: May 2, 2011

Custodian: Robert Cullen

GRC Complaint Filed: May 6, 2011³

Background

April 26, 2011

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 2, 2011

Custodian's response to the OPRA request. The Custodian responds in writing via letter to the Complainant's OPRA request on the fourth (4th) business day following receipt of such request. The Custodian states that access to the requested record is denied because OPRA is not intended to be used as a research tool for litigants to force government officials to identify and siphon useful information. The Custodian cites MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) in support of this proposition. The Custodian states that a request must identify the government records sought with specificity and requests should include identifiers. The Custodian asserts that the Complainant's request is too broad and that the Hazlet Township Police Department does not maintain the report the Complainant seeks. The Custodian states that such a report is maintained by the State Department of Transportation.

¹ No legal representation listed on record.

² Represented by James Gorman, Esq. (Shrewsbury, NJ).

³ The GRC received the Denial of Access Complaint on said date.

May 6, 2011

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

- Complainant’s OPRA request dated April 26, 2011
- Letter from the Custodian to the Complainant dated May 2, 2011

The Complainant does not agree to mediate this complaint.

May 13, 2011

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

May 20, 2011⁴

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated April 26, 2011
- Letter from the Custodian to the Complainant dated May 2, 2011

The Custodian states that although he originally believed that the Complainant’s request was overly broad, after further discussion with the Township’s legal counsel, the Custodian has agreed to fulfill the Complainant’s request. The Custodian certifies that he is preparing the 62 page motor vehicle accident report. The Custodian asserts that he must redact the New Jersey Driver’s License numbers, unlisted phone numbers, and social security numbers pursuant to OPRA. The Custodian states that the reports will be ready for release upon the GRC’s decision or approval to do so.

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*

⁴ The Custodian did not certify to the search undertaken to locate the records responsive or whether any records responsive to the Complainant’s OPRA request were destroyed in accordance with the Records Destruction Schedule established and approved by New Jersey Department of State, Division of Archives and Records Management as is required pursuant to Paff v. NJ Department of Labor, 392 N.J. Super. 334 (App. Div. 2007).

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. 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 regards to the disclosure of motor vehicle accident reports, New Jersey law provides that:

“Such written [accident] reports required to be forwarded by law enforcement officers and the information contained therein *shall not be privileged or held confidential*. Every citizen of this State shall have the right, during regular business hours and under supervision, to inspect and copy such reports and shall also have the right in person to purchase copies of the reports at the same fee established by section 6 of P.L.2001, c. 404 (C.47:1A-5) . . . The provisions of any other law or regulation to the contrary notwithstanding, reports obtained pursuant to this act shall not be subject to confidentiality requirements except as provided by section 28 of P.L.1960, c. 52 (C.2A:84A-28).” [Emphasis added]. N.J.S.A. 39:4-131.

In the instant matter, the Complainant requested copies “motor vehicle accident reports from April 1, 2011 to April 24, 2011. In response, the Custodian denied the Complainant access on the grounds that the Complainant’s request was overly broad and unclear pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005).

In MAG, 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.) *Id.* at 546. As the Court noted in invalidating MAG’s request under OPRA:

The instant matter is distinguishable from MAG, as the Complainant is clearly articulated a request for copies of motor vehicle accident reports. Moreover, the Complainant further clarifies his request and has named a clearly identifiable government record, as N.J.S.A. 39:4-131 specifically speaks to the mandatory disclosure of motor

vehicle accident reports and mandates that the information the reports not be considered confidential or privileged.

Accordingly, the GRC has held that is an unlawful denial of access when a custodian denies a requestor access to motor vehicle accident reports. In Truland v. Borough of Madison (Morris), GRC Complaint No. 2006-88 (September 2007), the GRC found that although the custodian denied a requestor access to motor vehicle records reports due to privacy concerns, N.J.S.A. 47:1A-9.a. does not allow any provision of OPRA to trump N.J.S.A. 39:4-131 and its requirement that such records be disclosed.

As in Truland, the Custodian in this instant matter denied the Complainant access to the requested motor vehicle accident reports. Accordingly, the Custodian has violated OPRA and N.J.S.A. 47:1A-9.a. by not disclosing the motor vehicle report in its entirety.

Therefore, the Custodian's denial of access in response to the Complainant's request for motor vehicle accident reports is in violation of N.J.S.A. 39:4-131 and N.J.S.A. 47:1A-1, as the Complainant has specifically identified government records that are subject to disclosure. Accordingly, the Complainant must disclose the requested records without redactions pursuant to N.J.S.A. 39:4-131, as motor vehicle accident reports "*shall not be privileged or held confidential.*" *Id.*, See Truland.

Whether the Custodian's actions rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances?

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's denial of access in response to the Complainant's request for motor vehicle accident reports is in violation of N.J.S.A. 39:4-131 and N.J.S.A. 47:1A-1, as the Complainant has specifically identified government records that are subject to disclosure. Accordingly, the Complainant must disclose the requested records without redactions pursuant to N.J.S.A. 39:4-131, as motor vehicle accident reports "*shall not be privileged or held confidential.*" *Id.* See Truland v. Borough of Madison (Morris), GRC Complaint No. 2006-88 (September 2007).
2. **The Custodian shall comply with item No. 1 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 1:4-4⁵, to the Executive Director.⁶

3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Darryl C. Rhone
Case Manager

Approved By: Karyn Gordon, Esq.
Acting Executive Director

June 19, 2012

⁵ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁶ Satisfactory compliance requires that the Custodian deliver the records to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.