



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  
Acting Commissioner

**FINAL DECISION**

**May 29, 2012 Government Records Council Meeting**

Derrick Bernard Parreott  
Complainant

Complaint No. 2011-78

v.

Asbury Park Police Department (Monmouth)  
Custodian of Record

At the May 29, 2012 public meeting, the Government Records Council (“Council”) considered the May 22, 2012 *Reconsideration* 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 Council reconsiders its Administrative Complaint Disposition pursuant to *N.J.A.C. 5:105- 2.10(a)* to fully adjudicate the issues the Complainant presented in his Denial of Access Complaint.
2. Because the weight of the competent, credible evidence indicates that the Custodian provided the Complainant with a written response to his OPRA request on March 16, 2011, the sixth (6<sup>th</sup>) business day following his receipt of the OPRA request dated March 7, 2011, the Custodian timely responded to the Complainant’s OPRA request pursuant to *N.J.S.A. 47:1A-5.g.* and *N.J.S.A. 47:1A-5.i.*
3. The Complainant sought access to citizen complaints filed against a specific list of fourteen (14) police officers. The Complainant’s request identifies a specific type of record and the subjects of each record. Although the Complainant does not identify a specific timeframe for the request, this does not render the complaint invalid because the Complainant has provided enough pertinent information to identify the specific records sought. *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) do not apply to the request relevant to this complaint. The Custodian’s search is not open-ended, nor does it require research, but rather requires the Custodian to locate the corresponding citizen complaints for the identified officers, and grant or deny access in accordance with OPRA. Therefore, the Complainant’s request is not invalid under OPRA as overly broad and/or unclear.
4. The Custodian lawfully denied access to the requested records because said records are exempt from public access under OPRA as personnel records pursuant to *N.J.S.A. 47:1A-10*, *Merino v. Borough of Ho-Ho-Kus*, GRC Complaint No. 2003-110 (Interim



Order dated March 2004), and Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010). Because the requested records are exempt from public access under OPRA as personnel records, the Council declines to address any other claimed exemption raised by the Custodian.

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 May, 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: June 4, 2012**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***Reconsideration***  
**Supplemental Findings and Recommendations of the Executive Director**  
**May 29, 2012 Council Meeting**

**Derrick Bernard Parreott<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2011-78**

**v.**

**Asbury Park Police Department (Monmouth)<sup>2</sup>**  
**Custodian of Records**

**Records Relevant to Complaint:** Citizen complaint records of the following Asbury Park Police Officers:

1. Inspector Thomas McDonald
2. Inspector Christopher VanBuren (Retired)
3. Sergeant Jeff White
4. Police Officer Donald Vick (Terminated)
5. Police Officer Nicholas Townsend
6. Police Officer "Warwick"
7. Police Officer Michael Paulk
8. Police Officer Eugene Dello
9. Lieutenant David DeSane
10. Police Officer Brian Townsend
11. Sergeant Amir Bercovicz
12. Police Officer Martinez
13. Police Officer Johnie Moore (Terminated)
14. Police Officer Shawn "Bradford" (Terminated)

**Request Made:** March 7, 2011  
**Response Made:** March 16, 2011  
**Custodian:** Chief Mark K. Kinmon  
**GRC Complaint Filed:** March 23, 2011

**Background**

**March 7, 2011**

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

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

<sup>2</sup> Represented by Jessica T. Zolotoroff, Esq., of Ansell Grimm & Aaron (Ocean, NJ).

**March 16, 2011**

Custodian's response to the OPRA request. The Custodian responds in writing to the Complainant's OPRA request on the sixth (6<sup>th</sup>) business day following receipt of such request.<sup>3</sup> The Custodian states that after legal counsel's review and Monmouth County Prosecutor's Office review, access to the requested records is denied because said records are personnel records and internal affairs records which are not subject to OPRA.

**March 23, 2011**

Denial of Access Complaint filed with the Government Records Council ("GRC") attaching the Complainant's OPRA request dated March 7, 2011.<sup>4</sup> The Complainant states that he submitted his OPRA request on March 7, 2011 and he has not received any response from the Custodian. The Complainant claims that the records responsive are not records that pertain to any criminal investigation but instead are records cloaking racial discrimination. The Complainant asserts that the release of said records will not jeopardize the safety of any person or interfere with any active investigation.

The Complainant argues his access rights pursuant to Spinks v. Township of Clinton, 402 N.J. Super. 454 (App. Div. 2008), wherein the Court held that:

"[t]here is a presumption of public access to documents and materials filed with a court in connection with civil litigation. That right exists under the common law as to the litigants and the public...Furthermore, we have also recognized that access is required by the First Amendment..."

Additionally, the Complainant affirmatively asserts that he has also filed action in the New Jersey Superior Court concerning the records request that is the subject of this complaint under Docket No. L-823-09.

Additionally, the Complainant agrees to mediate this complaint.

**May 24, 2011**

Government Records Council's ("Council") Administrative Complaint Disposition. At its May 24, 2011 public meeting, the Council considered the April 20, 2011 Administrative Complaint Disposition and all related documentation submitted by the parties. The Council voted unanimously to administratively dispose of this complaint on the grounds that the Complainant affirmatively asserted in his Denial of Access Complaint Form that he has an action pending in Superior Court regarding the records request subject of this complaint.

**May 25, 2011**

Council's Administrative Complaint Disposition distributed to the parties.

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<sup>3</sup> The Custodian certifies in his Statement of Information that he received the Complainant's OPRA request on March 8, 2011.

<sup>4</sup> The Complainant attaches additional records, including copies of discovery motions, which are not relevant to the adjudication of this Denial of Access Complaint.

### **July 11, 2011**

Letter from Complainant to GRC. The Complainant asks the Council to reconsider its final administrative determination in this matter. The Complainant states that he did in fact file an action in the Superior Court of New Jersey, Monmouth County Vicinage, to compel the Asbury Park Police Department to release records.<sup>5</sup> The Complainant states that he initiated his court action prior to the filing of his OPRA request. The Complainant states that he has no action currently pending in Superior Court. The Complainant states that he filed his OPRA request because the Court denied his request to compel production of records.

### **August 4, 2011**

Request for the Statement of Information (“SOI”) sent to the Custodian. The GRC states that although the Council adjudicated this complaint on May 24, 2011, the Council may reconsider any decision it renders, at its own discretion, pursuant to *N.J.A.C. 5:105-2.10(a)*.

### **August 8, 2011**

Custodian’s SOI with the following attachments:

- Complainant’s OPRA request dated March 7, 2011
- Custodian’s response to the OPRA request dated March 16, 2011
- Certified Mail Receipt addressed to the Complainant from the Custodian

The Custodian certifies that he received the Complainant’s OPRA request on March 8, 2011 and that he provided a written response on March 16, 2011.

The Custodian certifies that his search for the requested records included reviewing the requested records, determining said records to be confidential, conferring with the County Prosecutor on the matter, and relaying his denial to the Complainant.

The Custodian also certifies that no records responsive that may have been responsive to the 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. The Custodian certifies that Internal Affairs records must be maintained on file for the career of the officer plus five (5) years. The Custodian also certifies that to the extent the Internal Affairs records involve a criminal matter which resulted in the arrest of the officer, said records must be maintained for 75 years.

The Custodian asserts that the Complainant’s OPRA request is procedurally deficient because the request fails to identify the specific records sought and instead specifies a general file and all records contained therein. The Custodian states that in *Morgano v. Essex County Prosecutor’s Office*, GRC Complaint No. 2007-156 (February 2009) and *Feiler-Jampel v. Somerset County Prosecutor’s Office*, GRC Complaint No. 2007-190 (July 2008), the complainants’ requests for internal affairs records were denied, in part, because the requests were “essentially blanket requests for a class of various documents rather than a request for specific government records.” *See also* *Patti v.*

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<sup>5</sup> The Complainant attaches his court filings to this letter.

Sussex County Prosecutor's Office, GRC Complaint No. 2009-76 (January 2010); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007).

Additionally, the Custodian contends that the requested records are exempt from public access under OPRA pursuant to N.J.S.A. 47:1A-1.1. because said records contain "information generated by or on behalf of public employers or public employees in connection with any grievance filed by or against an individual." *See also* N.J.S.A. 47:1A-10. The Custodian additionally argues that the records are exempt from public access as advisory, consultative or deliberative material pursuant to N.J.S.A. 47:1A-1.1. In support of this argument, the Custodian states that Internal Affairs is a bureau organized for the purpose of tracking potentially problematic situations and their records are used to make personnel decisions.

Further, the Custodian states that in Rivera v. Borough of Keansburg Police Department, GRC Complaint No. 2007-222 (June 2010), the Council adopted the Administrative Law Judge's decision wherein the Judge concluded that "the custodian of the requested records did not unlawfully deny access to the Internal Affairs Case Index Reports because they are confidential documents." The Custodian also states that in Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (July 2004), the Council held that:

"[t]he [c]omplainant's request to view the records of complaints filed against Officer Tuttle were properly denied by the [c]ustodian. N.J.S.A. 47:1A-10 provides in pertinent part that 'the personnel or pension records of any individual in the possession of a public agency, *including but not limited to* records relating to *any grievance filed by or against an individual*, shall not be considered a public record and shall not be made available for public access.' As a result, records of complaints filed against Officer Tuttle, and/or reprimands he has received are not subject to public access."

The Custodian also asserts that N.J.S.A. 40A:14-181 provides that police departments must promulgate a policy consistent with the Attorney General's Internal Affairs Police and Procedure ("IAPP"). The Custodian claims that said law is not abrogated by OPRA pursuant to N.J.S.A. 47:1A-9.a. and the confidentiality provisions of the IAPP restrict public access to the requested records and justify the Custodian's denial of the Complainant's OPRA request. *See* Patti v. Sussex County Prosecutor's Office, GRC Complaint No. 2009-76 (January 2010); Rivera v. Borough of Roselle Park, GRC Complaint No. 2007-224 (November 2008); Daily Journal v. Police Dept. of City of Vineland, 351 N.J. Super. 110 (App. Div. 2002), *cert. denied*, 174 N.J. 364; Janeczko v. N.J. Department of Law and Public Safety, GRC Complaint No. 2002-79 and 2002-80 (June 2004); Johnson v. New Jersey Division of State Police, GRC Complaint No. 2004-46 (June 2004).

The Custodian states that the IAPP specifically provides that:

“the nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information. The contents of the internal affairs investigation case files shall be retained in the internal affairs unit and clearly marked as confidential.”

The Custodian also states that the IAPP provides that “internal affairs files shall be made available to the county prosecutor’s office to decide which items are discoverable and which are admissible.” The Custodian certifies that he had the Monmouth County Prosecutor’s Office review the Complainant’s OPRA request and received confirmation from said office that the records are not public. Further, the Custodian states that two (2) Superior Court Judges determined that the Complainant is not entitled to the requested records.<sup>6</sup>

Finally, the Custodian states that “a public agency has a responsibility and an obligation to safeguard from public access a citizen’s personal information with which it has been entrusted when disclosure thereof would violate the citizen’s reasonable expectation of privacy.” Serrano v. South Brunswick Twp., 358 N.J. Super. 352, 368-69 (App. Div. 2003). The Custodian contends that he properly denied access to the requested records in furtherance of this principle.

### **August 15, 2011**

The Complainant’s response to the Custodian’s SOI. The Complainant states that the IAPP provides that “each agency must periodically release reports to the public summarizing the allegations received and the investigations concluded for that period. These reports shall not contain the identities of officers or complainants.”

Additionally, the Complainant states that although the Custodian indicated that a public agency must safeguard from public access a citizen’s personal information, the Complainant is seeking records regarding public employees and not personal information of citizens.<sup>7</sup>

### **Analysis**

Pursuant to *N.J.A.C. 5:105-2.10(a)*, the Council, “at its own discretion, may reconsider any decision it renders.” *Id.* The GRC thus reconsiders this matter of its own volition in order to amend the Council’s May 24, 2011 Administrative Complaint Disposition.

OPRA provides that:

“[a] person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:

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<sup>6</sup> The Courts made said determinations prior to the Complainant’s filing of the OPRA request which is the subject of this Denial of Access Complaint.

<sup>7</sup> The Complainant provides additional statements/assertions; however, said statements/assertions are either not relevant to the adjudication of this complaint or are a restatement of statements/assertions already provided to the Council.

- institute a proceeding to challenge the custodian’s decision by filing an action in Superior Court ...;
- or in lieu of filing an action in Superior Court, file a complaint with the Government Records Council ...” (Emphasis added). N.J.S.A. 47:1A-6.

At its May 24, 2011 public meeting, the Council considered the April 20, 2011 Administrative Complaint Disposition and all related documentation submitted by the parties. The Council voted unanimously to administratively dispose of this complaint on the grounds that the Complainant affirmatively asserted in his Denial of Access Complaint Form that he has an action pending in Superior Court regarding the records request subject of this complaint.

However, the Complainant initiated his court action *prior* to the filing of his OPRA request and has no action currently pending in Superior Court.

Therefore, the Council reconsiders its Administrative Complaint Disposition pursuant to *N.J.A.C.* 5:105- 2.10(a) to fully adjudicate the issues the Complainant presented in his Denial of Access Complaint.

**Whether the Custodian timely responded to the Complainant’s OPRA request?**

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.

Further, OPRA 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 mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5.i. As also prescribed under N.J.S.A. 47:1A-5.i., a custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A.



47:1A-5.g.<sup>8</sup> Thus, a custodian's failure to respond in writing to a complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g., N.J.S.A. 47:1A-5.i., and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In this instant complaint, the Complainant asserted in his Denial of Access Complaint that he did not receive any response to his OPRA request dated March 7, 2011. However, the Custodian certified in his SOI that he received the Complainant's request on March 8, 2011 and provided a written response on March 16, 2011. The Custodian also attached to his SOI a certified mail receipt addressed to the Complainant.<sup>9</sup> The Complainant has not disputed the Custodian's submissions in this regard.

The weight of the competent, credible evidence, therefore, indicates that the Custodian provided the Complainant with a written response to his OPRA request on March 16, 2011, the sixth (6<sup>th</sup>) business day following his receipt of the OPRA request dated March 7, 2011.

Therefore, because the weight of the competent, credible evidence indicates that the Custodian provided the Complainant with a written response to his OPRA request on March 16, 2011, the sixth (6<sup>th</sup>) business day following his receipt of the OPRA request dated March 7, 2011, the Custodian timely responded to the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.

### **Whether the Complainant's OPRA request is invalid under OPRA as overly broad and/or unclear?**

The Custodian asserts that the Complainant's OPRA request is procedurally deficient because the request fails to identify the specific records sought and instead specifies a general file and all records contained therein. The Custodian states that in Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-156 (February 2009) and Feiler-Jampel v. Somerset County Prosecutor's Office, GRC Complaint No. 2007-190 (July 2008), the complainants' requests for internal affairs records were denied, in part, because the requests were "essentially blanket requests for a class of various documents rather than a request for specific government records." *See also* Patti v. Sussex County Prosecutor's Office, GRC Complaint No. 2009-76 (January 2010); MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005); New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007).

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<sup>8</sup> It is the GRC's position that a custodian's written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency's official OPRA request form, is a valid response pursuant to OPRA.

<sup>9</sup> According to [www.usps.com](http://www.usps.com), using the tracking number contained on the certified mail receipt provided by the Custodian: "Your item was delivered at 11:06 am on March 19, 2011 in Asbury Park, NJ 07712..." Derrick Bernard Parreott v. Asbury Park Police Department (Monmouth), 2011-78 – *Reconsideration* Supplemental Findings and Recommendations of the Executive Director 7

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.

In determining that MAG Entertainment's request for "all documents or records" from the Division of Alcoholic Beverage Control pertaining to selective enforcement was invalid under OPRA, the Appellate Division noted that:

"[m]ost significantly, the request failed to identify with any specificity or particularity the governmental records sought. MAG provided neither names nor any identifiers other than a broad generic description of a brand or type of case prosecuted by the agency in the past. Such an open-ended demand required the Division's records custodian to manually search through all of the agency's files, analyze, compile and collate the information contained therein, and identify for MAG the cases relative to its selective enforcement defense in the OAL litigation. Further, once the cases were identified, the records custodian would then be required to evaluate, sort out, and determine the documents to be produced and those otherwise exempted." *Id.*

Further, in Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>10</sup> 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." "As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents."<sup>11</sup>

Additionally, in New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007), the court cited MAG by stating that "...when a request is 'complex' because it fails to specifically identify the documents sought, then that request is not 'encompassed' by OPRA..."

Furthermore, in Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) the Council held that "[b]ecause the Complainant's OPRA requests # 2-5 are not requests for identifiable government records, the requests are invalid and the Custodian has not unlawfully denied access to the requested records pursuant to MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534

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<sup>10</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

<sup>11</sup> As stated in Bent, *supra*.

(App. Div. 2005) and Bent v. Stafford Police Department, 381 N.J.Super. 30 (App. Div. 2005).”

However, in Burnett v. County of Gloucester, 415 N.J.Super. 506 (App. Div. 2010), the plaintiff appealed from an order of summary judgment entered against him in his suit to compel production by the County of Gloucester of documents requested pursuant to OPRA, consisting of “[a]ny and all *settlements, releases or similar documents* entered into, approved or accepted from 1/1/2006 to present.” Id. at 508. (Emphasis added). The Appellate Division determined that the request sought a specific type of document, although it did not specify a particular case to which such document pertained, and was therefore not overly broad. Id. at 515-16.

This instant complaint is similar to the facts in Burnett, *supra*. The Complainant sought access to citizen complaints filed against a specific list of fourteen (14) police officers. The Complainant’s request identifies a specific type of record and the subjects of each record. Although the Complainant does not identify a specific time frame for the request, this does not render the complaint invalid because the Complainant has provided enough pertinent information to identify the specific records sought. MAG, *supra*, and Bent, *supra*, do not apply to the request relevant to this complaint. The Custodian’s search is not open-ended, nor does it require research, but rather requires the Custodian to locate the corresponding citizen complaints for the identified officers and grant or deny access in accordance with OPRA. Therefore, the Complainant’s request is not invalid under OPRA as overly broad and/or unclear.

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

OPRA provides that:

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

Additionally, OPRA defines a government record as:

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

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

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

Additionally, OPRA provides that:

“...the *personnel or pension records* of any individual in the possession of a public agency... *shall not be considered a government record* and shall not be made available for public access, except that:

- an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record;
- personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and
- data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.” (Emphasis added). N.J.S.A. 47:1A-10.

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 Custodian denied access to the Complainant’s OPRA request, in writing, on the sixth (6<sup>th</sup>) business day following receipt of said request on the basis that the requested records are exempt from public access as personnel records and Internal Affairs records, which are not subject to OPRA.

OPRA generally exempts personnel records from public access. Specifically, OPRA states that “the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access...” N.J.S.A. 47:1A-10. Notwithstanding this provision, OPRA also contains exceptions to the personnel record exemption. The following categories are personnel records, which *are* subject to public access:

- “an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received...”

- personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and
- data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.” N.J.S.A. 47:1A-10.

The specific records at issue in this instant complaint are citizen complaint records filed against Asbury Park Police Officers. These complaint records are not included in any of the three (3) categories of personnel records listed above which are available for public access. As such, it follows that the complaint records are personnel records which are exempt from access under OPRA pursuant to N.J.S.A. 47:1A-10.

In fact, the Council has previously adjudicated complaints in which the records requested were complaints filed against police officers. In Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004) the Council held that:

“[t]he Complainant’s request to review the records of complaints filed against Officer Tuttle were properly denied by the Custodian. N.J.S.A. 47:1A-10 provides in pertinent that “the personnel or pension records of any individual in the possession of a public agency, *including but not limited to* records relating to *any grievance filed by or against an individual*, shall not be considered a public record and shall not be made available for public access” [emphasis added]. As a result, records of complaints filed against Officer Tuttle and/or reprimands he has received are not subject to public access.”

Further, in Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010) the Council held that:

“[a]lthough the Custodian violated OPRA at N.J.S.A. 47:1A-5.g. by failing to provide a response to the Complainant’s request for the disciplinary history for Trenton Police Department Detective, Robert Sheehan (retired), said record is exempt from disclosure as a personnel record pursuant to N.J.S.A. 47:1A-10 and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (March 2004).”

Conversely, the Complainant argues his access rights to the requested records pursuant to Spinks v. Township of Clinton, 402 N.J. Super. 454 (App. Div. 2008), wherein the Court held that:

“[t]here is a presumption of public access to documents and materials filed with a court in connection with civil litigation. That right exists under the

common law as to the litigants and the public...Furthermore, we have also recognized that access is required by the First Amendment..."

However, the court's holding in Spinks is not persuasive in this instant matter. In Spinks, the Township of Clinton sought to bar the release of certain documents, primarily the records of the internal investigation of the Township police department, submitted to the trial court in connection with a summary judgment motion, arguing that disclosure is forbidden by law, and that, under common-law principles, the Township's interest in confidentiality outweighs the public's interest in accessing the records. There is no OPRA request at issue in Spinks and the court never discusses OPRA in its decision. A court's decision regarding a requestor's common law access rights to records does not override OPRA's express statutory exemption to personnel records.

Therefore, the Custodian lawfully denied access to the requested records because said records are exempt from public access under OPRA as personnel records pursuant to N.J.S.A. 47:1A-10, Merino, supra, and Vaughn, supra. Because the requested records are exempt from public access under OPRA as personnel records, the Council declines to address any other claimed exemption raised by the Custodian.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Council reconsiders its Administrative Complaint Disposition pursuant to N.J.A.C. 5:105- 2.10(a) to fully adjudicate the issues the Complainant presented in his Denial of Access Complaint.
2. Because the weight of the competent, credible evidence indicates that the Custodian provided the Complainant with a written response to his OPRA request on March 16, 2011, the sixth (6<sup>th</sup>) business day following his receipt of the OPRA request dated March 7, 2011, the Custodian timely responded to the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5.g. and N.J.S.A. 47:1A-5.i.
3. The Complainant sought access to citizen complaints filed against a specific list of fourteen (14) police officers. The Complainant's request identifies a specific type of record and the subjects of each record. Although the Complainant does not identify a specific timeframe for the request, this does not render the complaint invalid because the Complainant has provided enough pertinent information to identify the specific records sought. 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) do not apply to the request relevant to this complaint. The Custodian's search is not open-ended, nor does it require research, but rather requires the Custodian to locate the corresponding citizen complaints for the identified officers, and grant or deny access in accordance with OPRA. Therefore, the Complainant's request is not invalid under OPRA as overly broad and/or unclear.

4. The Custodian lawfully denied access to the requested records because said records are exempt from public access under OPRA as personnel records pursuant to N.J.S.A. 47:1A-10, Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004), and Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010). Because the requested records are exempt from public access under OPRA as personnel records, the Council declines to address any other claimed exemption raised by the Custodian.

Prepared By: Dara L. Barry  
Communications Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

May 22, 2012



## NEW JERSEY GOVERNMENT RECORDS COUNCIL

### Administrative Complaint Disposition – Complainant Affirmatively Asserted in the Denial of Access Complaint Form that He Has An Action Pending in Superior Court Regarding the Records Request Subject of this Complaint

**GRC Complaint No.:** 2011-78

**Complainant:** Derrick Bernard Parreott

**Custodian:** Asbury Park Police Department (Monmouth) – Mark K. Kinmon

**Date of Request:** March 7, 2011

**Date of Complaint:** March 23, 2011<sup>1</sup>

**Complaint Disposition:** The Complainant has affirmatively asserted on the Denial of Access Complaint form that he has also instituted an action in Superior Court regarding the denial of access at issue in the complaint also filed with the Government Records Council.

**Applicable OPRA Provision:** N.J.S.A. 47:1A-6 provides that:

“A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may: institute a proceeding to challenge the custodian’s decision by filing an action in Superior Court ...; *or in lieu of filing an action in Superior Court*, file a complaint with the Government Records Council ...” (Emphasis added).

**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.**

**Effective Date of Disposition:** May 24, 2011

Prepared By: Dara Lownie  
Communications Manager

Approved By: Catherine Starghill, Esq.  
Executive Director

Date: April 20, 2011

**Distribution Date: May 25, 2011**

<sup>1</sup> The GRC received the Denial of Access Complaint on said date.