



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 30, 2014 Government Records Council Meeting

Brian Killion
Complainant

Complaint No. 2013-228

v.

Hammonton Police Department (Atlantic)
Custodian of Record

At the September 30, 2014 public meeting, the Government Records Council (“Council”) considered the September 23, 2014 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 the Complainant admitted in his request for reconsideration that he was convicted and sentenced subsequently after submitting his OPRA request. The Complainant also failed to cite to any authority supporting his argument that N.J.S.A. 47:1A-2.2 should not apply at the time of his request. Therefore, the Complainant failed to establish that the complaint should be reconsidered based on illegality or extraordinary circumstances. The Complainant also failed to show that the Council acted arbitrarily, capriciously or unreasonably. The Council, acting within the spirit of the law, reasonably ruled that public policy prohibits convicted felons from obtaining records regarding his victim’s relatives. Thus, the Complainant’s request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 30th Day of September, 2014

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: October 3, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
September 30, 2014 Council Meeting

Brian Killion¹
Complainant

GRC Complaint No. 2013-228

v.

Hammonton Police Department (Atlantic)²
Custodial Agency

Records Relevant to Complaint: Complaints, summons and warrants made by or issued for Kelly Cuci (AKA Kelly Owens) and Michael Cuci.

Custodian of Record: Mimi Massara

Request Received by Custodian: June 14, 2013

Response Made by Custodian: June 17, 2013

GRC Complaint Received: August 1, 2013

Background

June 24, 2014 Council Meeting:

At its June 24, 2014 public meeting, the Council considered June 17, 2014 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 improperly required the Complainant to complete an official OPRA request form. Wolosky v. Twp. of East Hanover (Morris), GRC Complaint No. 2010-259 (February 2012); Renna v. Cnty. of Union, 407 N.J. Super. 230, 245 (App. Div. 2009). Even if the Custodian failed to receive the Complainant's May 21, 2013 OPRA request, the Complainant's subsequent letter of June 14, 2013 invoked OPRA, and restated the nature of his original request.
2. Notwithstanding the Custodian's "deemed" denial, the responsive documents to the Complainant's OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-2.2, as the Complainant seeks records containing information regarding the victim of his crimes. Thus, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-6.

¹ No legal representation listed on record.

² Represented by Brian G. Howell, Esq., Howell & Bertman (Hammonton, NJ).

3. Although the Custodian provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-5(g), the Custodian's denial of access is proper because the Complainant seeks records regarding relatives of his victim. Additionally, 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, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Procedural History:

On June 26, 2014, the Council distributed its Final Decision to all parties. On July 8, 2014, the Complainant requested additional time to submit a request for reconsideration. On July 15, 2014, the GRC granted the Complainant's request for an extension until Monday, August 11, 2014.

On August 4, 2014, the Complainant filed a request for reconsideration of the Council's June 24, 2014 Final Decision, based on illegality and extraordinary circumstances.

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. Further, N.J.A.C. 5:105-2.10(a) – (e) provides that the Council will provide all parties with written notification of its determination regarding the request for reconsideration.

In the matter before the Council, the Complainant filed the request for reconsideration of the Council's Order dated June 24, 2014 on August 4, 2014, thirty-nine (39) days from the issuance of the Council's Order.

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, 242 N.J. Super. at 401. “Although it is an

overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement. Ibid.

In the Matter of the Petition of Comcast Cablevision of S. Jersey, Inc. for a Renewal Certificate of Approval to Continue to Construct, Operate and Maintain a Cable Tel. Sys. in the City of Atl. City, Cnty. of Atl., State of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

As the moving party, the Complainant is required to establish either of the criteria set forth above: 1) the Council's decision is based upon a "palpably incorrect or irrational basis"; or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. *See Cummings*, 295 N.J. Super. at 384.

In the instant matter, the Complainant first argued that the Custodian deliberately ignored his request because she made him fill out an OPRA request form. The Council, however, already addressed this issue. In its June 24, 2014 Order, the Council held that the Custodian's requirement to fill out the OPRA form was improper. The Complainant has not provided any evidence demonstrating that the Council's holding was illegal or warrants reconsideration based on extraordinary circumstances.

The Complainant then contended that because he was not convicted of a felony at the time of his OPRA submission, he should not be barred from obtaining records containing information regarding his victim's family members. *See N.J.S.A. 47:1A-2.2*. The Council, in its June 24, 2014 Order, acknowledged that the Custodian's submission supported his argument that he was convicted after the OPRA request was made. The Council also considered that the Complainant had not been convicted of a felony at the time of his request. The Council, however, found that the intent and spirit of OPRA necessitated that the documents be withheld from disclosure.

The Complainant, in his request for reconsideration, again acknowledged that he was convicted and sentenced after submitting his OPRA request. The Complainant, however, failed to cite to any authority or make any argument as to why the Council's decision was illegal. Further, he failed to argue any extraordinary circumstances warranting the disclosure of records pertaining to his victim's family members. Therefore, the Complainant failed to establish that the complaint should be reconsidered based on illegality or extraordinary circumstances. The Complainant also failed to show that the Council acted arbitrarily, capriciously or unreasonably. *See D'Atria*, 242 N.J. Super. at 401. The Council, acting within the spirit of the law, reasonably ruled that public policy prohibits convicted felons from obtaining records regarding his victim's relatives. Thus, the Complainant's request for reconsideration should be denied. *Cummings*, 295 N.J. Super. at 384; *D'Atria*, 242 N.J. Super. at 401; *Comcast*, 2003 N.J. PUC at 5-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find the Complainant admitted in his request for reconsideration that he was convicted and sentenced subsequently after submitting his OPRA request. The Complainant also failed to cite to any authority

supporting his argument that N.J.S.A. 47:1A-2.2 should not apply at the time of his request. Therefore, the Complainant failed to establish that the complaint should be reconsidered based on illegality or extraordinary circumstances. The Complainant also failed to show that the Council acted arbitrarily, capriciously or unreasonably. The Council, acting within the spirit of the law, reasonably ruled that public policy prohibits convicted felons from obtaining records regarding his victim's relatives. Thus, the Complainant's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.
Acting Executive Director

September 23, 2014



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

June 24, 2014 Government Records Council Meeting

Brian Killion
Complainant

Complaint No. 2013-228

v.

Hammonton Police Department (Atlantic)
Custodian of Record

At the June 24, 2014 public meeting, the Government Records Council (“Council”) considered the June 17, 2014 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 improperly required the Complainant to complete an official OPRA request form. Wolosky v. Twp. of East Hanover (Morris), GRC Complaint No. 2010-259 (February 2012); Renna v. Cnty. of Union, 407 N.J. Super. 230, 245 (App. Div. 2009). Even if the Custodian failed to receive the Complainant’s May 21, 2013 OPRA request, the Complainant’s subsequent letter of June 14, 2013 invoked OPRA, and restated the nature of his original request.
2. Notwithstanding the Custodian’s “deemed” denial, the responsive documents to the Complainant’s OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-2.2, as the Complainant seeks records containing information regarding the victim of his crimes. Thus, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-6.
3. Although the Custodian provided an insufficient response to the Complainant’s request pursuant to N.J.S.A. 47:1A-5(g), the Custodian’s denial of access is proper because the Complainant seeks records regarding relatives of his victim. Additionally, 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, the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and an 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 24th Day of June, 2014

Robin Berg Tabakin, Esq., Chair
Government Records Council

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

Steven Ritardi, Esq., Secretary
Government Records Council

Decision Distribution Date: June 26, 2014

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
June 24, 2014 Council Meeting**

**Brian Killion¹
Complainant**

GRC Complaint No. 2013-228

v.

**Hammonton Police Department (Atlantic)²
Custodial Agency**

Records Relevant to Complaint: Complaints, summons and warrants made by or issued for Kelly Cuci (AKA Kelly Owens) and Michael Cuci.

Custodian of Record: Mimi Massara

Request Received by Custodian: June 14, 2013

Response Made by Custodian: June 17, 2013

GRC Complaint Received: August 1, 2013

Background³

Request and Response:

On May 21, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. The Custodian certifies that they never received this request. On June 14, 2013, the Complainant submitted a certified letter to the Custodian, wherein, he alleged that the Custodian failed to timely respond to his May 21, 2013 request. Within the June 14, 2013 letter, the Complainant relisted the documents previously sought. On June 17, 2013, two (2) business days later, the Custodian responded in writing acknowledging receipt of the Complainant’s June 14, 2013 letter, but instructed the Complainant to fill out an OPRA request form.

Denial of Access Complaint:

On August 1, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that although he properly submitted his OPRA request on May 21, 2013, the Custodian failed to respond to same within

¹ No legal representation listed on record.

² Represented by Brian G. Howell, Esq., Howell & Bertman (Hammonton, NJ).

³ The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

the statutorily mandated time period. The Complainant infers that he should not have been required to complete a second OPRA request.

Statement of Information:

On March 18, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she never received the Complainant’s OPRA request dated May 21, 2013. Rather, the Custodian certifies that the first correspondence she received was the Complainant’s letter dated June 14, 2013 stating that the Custodian was in violation of the time period to respond to his OPRA request. The Custodian certifies that she replied to the Complainant on June 17, 2013 instructing the Complainant to complete an OPRA request form.

Although the Custodian certifies that she did not receive the Complainant’s May 21, 2013 OPRA request, she certifies that the Complainant seeks records which relate, directly or indirectly, to the victim(s) of his crimes.

Additional Submissions:

On October 4, 2013, the Custodian submitted an email to the GRC with an attached newspaper article dated September 20, 2013, indicating that a court convicted a “Brian E. Killion” of thirty-four (34) charges, which included aggravated sexual assault.

On April 4, 2014, the Custodian submitted another email to the GRC with an attached newspaper article dated March 27, 2014, indicating that a “Brian Killion,” convicted in September of thirty-four (34) charges, was sentenced to 85 years in prison. The article also quotes a “Kelly Cuci,” who was identified in the article as the mother of one of the Complainant’s victims.

Analysis

Insufficient Response

OPRA provides that:

“[t]he custodian of a public agency shall adopt a form for the use of any person who requests access to a government record held or controlled by the public agency. The form shall provide space for the name, address, and phone number of the requestor and a brief description of the government record sought. The form shall include space for the custodian to indicate which record will be made available, when the record will be available, and the fees to be charged. The form shall also include the following:

- (1) specific directions and procedures for requesting a record;
- (2) a statement as to whether prepayment of fees or a deposit is required;
- (3) the time period within which the public agency is required

by [OPRA], to make the record available;
(4) a statement of the requestor's right to challenge a decision by the public agency to deny access and the procedure for filing an appeal;
(5) space for the custodian to list reasons if a request is denied in whole or in part;
(6) space for the requestor to sign and date the form;
(7) space for the custodian to sign and date the form if the request is fulfilled or denied.”

N.J.S.A. 47:1A-5(f).

Furthermore, OPRA states: “a request for access to a government record shall be in writing and hand-delivered, mailed, transmitted electronically or otherwise conveyed to the appropriate custodian.” N.J.S.A. 47:1A-5(g).

The custodian in Wolosky v. Twp. of East Hanover (Morris), GRC Complaint No. 2010-259 (February 2012), responded to an email request by requiring the complainant to complete an official OPRA request form. The Council found that the complainant’s email explicitly referenced “OPRA,” and furthermore, since the Custodian responded to the Complainant stating that no records existed, he understood the nature and substance of the complainant’s request. Id. (citing Renna v. Cnty. of Union, 407 N.J. Super. 230, 245 (App. Div. 2009)).

In the instant matter, the Custodian claims she never received the Complainant’s May 21, 2013 OPRA request, however she acknowledges that she received the Complainant’s June 14, 2013 letter. Similar to the complainant’s email in Wolosky, the Complainant’s June 14, 2013 letter explicitly invoked OPRA, and restated the records he sought in his May 21, 2013 request. GRC No. 2010-259. Moreover, the Custodian acknowledges receipt of the Complainant’s “request” in her June 17, 2013 response. Taken *in toto*, the evidence of the record demonstrates the Custodian understood the nature and substance of the Complainant’s request, even if she never received his May 21, 2013 OPRA request.

Therefore, the Custodian improperly required the Complainant to complete an official OPRA request form. Wolosky, GRC No. 2010-259; Renna, 407 N.J. Super. at 245. Even if the Custodian failed to receive the Complainant’s May 21, 2013 OPRA request, the Complainant’s subsequent letter of June 14, 2013 invoked OPRA and restated the nature of his original request.

Unlawful Denial of Access

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.

OPRA prohibits a convicted person from accessing records relating to the victim of the person's crime:

“[n]otwithstanding the provisions of [OPRA] or the provisions of any other law to the contrary, where it shall appear that a person who is convicted of any indictable offense under the laws of this State, any other state or the United States is seeking government records containing personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information, the right of access provided for in [OPRA] shall be denied.”

N.J.S.A. 47:1A-2.2 (emphasis added).

Here, the Complainant requests any charging documents (complaints, summons, or warrants) made by Kelly Cuci and/or Michael Cuci. The Custodian submits newspaper articles stating that the Complainant was convicted of crimes committed against a relative of Kelly Cuci, one of the subjects of his OPRA request. Steve Hughes, *Ex-Boy Scout Leader from Absecon gets 85 years for child-sex crimes*, The Press of Atlantic City (Mar. 28, 2014, 3:45 PM), <http://www.pressofatlanticcity.com>. However, according to documents submitted by the Custodian, the Complainant had not been convicted of the crimes charged at the time he submitted his May 21, 2013 OPRA request. While the GRC acknowledges that N.J.S.A. 47:1A-2.2 would not have prohibited the Complainant from accessing the requested records at the time he submitted his OPRA request, the GRC is satisfied that the Legislature intended to protect the identities of victims and their relatives from those who perpetrated a crime against them.

Thus, notwithstanding the fact that the Complainant's conviction was subsequent to filing his OPRA request, the GRC is satisfied that N.J.S.A. 47:1A-2.2 applies. The Complainant is an incarcerated individual seeking records pertaining to relatives of his victim. The evidence of record, including the fact that the Complainant listed Atlantic County Jail as his mailing address, demonstrates that he is incarcerated. Additionally, the Custodian submitted newspaper articles supporting her certification that the records at issue pertain to charging documents made by or against relatives of a Complainant's victim.

Therefore, notwithstanding the Custodian's "deemed" denial, the responsive documents to the Complainant's OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-2.2, as the Complainant seeks records containing information regarding relatives of the victim of his crime(s). Thus, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-6.

Knowing & Willful

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 "... [i]f 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 (Id.; Marley v. Borough of Palmyra, 193 N.J. Super. 271, 294-95 (Law Div. 1993)); 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)).

Although the Custodian provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-5(g), the Custodian's denial of access is proper because the Complainant seeks records regarding relatives of his victim. Additionally, 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, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian improperly required the Complainant to complete an official OPRA request form. Wolosky v. Twp. of East Hanover (Morris), GRC Complaint No. 2010-259 (February 2012); Renna v. Cnty. of Union, 407 N.J. Super. 230, 245 (App. Div. 2009). Even if the Custodian failed to receive the Complainant's May 21, 2013 OPRA request, the Complainant's subsequent letter of June 14, 2013 invoked OPRA, and restated the nature of his original request.
2. Notwithstanding the Custodian's "deemed" denial, the responsive documents to the Complainant's OPRA request are exempt from disclosure pursuant to N.J.S.A. 47:1A-2.2, as the Complainant seeks records containing information regarding the victim of his crimes. Thus, the Custodian lawfully denied access to the responsive records. N.J.S.A. 47:1A-6.

3. Although the Custodian provided an insufficient response to the Complainant's request pursuant to N.J.S.A. 47:1A-5(g), the Custodian's denial of access is proper because the Complainant seeks records regarding relatives of his victim. Additionally, 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, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and an unreasonable denial of access under the totality of the circumstances.

Prepared By: Samuel A. Rosado, Esq.
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.
Acting Executive Director

June 17, 2014