



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**

Dadge Dawara  
Complainant

Complaint No.2013-267

v.

Office of the Essex County Administrator  
Custodian of Record

At the June 24, 2014 public meeting, the Government Records Council (“Council”) considered the June 17, 2014 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Complainant has failed to establish in his request for reconsideration of the Council’s April 29, 2014 Final Decision that either 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. The Complainant failed to establish that the complaint should be reconsidered based on mistake, extraordinary circumstances, fraud, new evidence, change in circumstances, and illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. The Complainant certified that, as of May 13, 2014, he had not received the documents ordered disclosed by the Council. The Custodian, however, certified on both April 2, 2014 and May 29, 2014 that he mailed redacted copies of the responsive documents to the Complainant on April 2, 2014. Additionally, the Custodian sent second copies of the compliance documents to the Complainant via certified mail on June 4, 2014. 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 24<sup>th</sup> 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**

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

**Dadge Dawara<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2013-267**

v.

**Office of the Essex County Administrator<sup>2</sup>**  
**Custodial Agency**

**Records Relevant to Complaint:** The Complainant seeks “copies of all my police report for October 24, 2000.”

**Custodian of Record:** Al Fusco

**Request Received by Custodian:** July 31, 2013

**Response Made by Custodian:** August 7, 2013

**GRC Complaint Received:** September 17, 2013

**Background**

**April 29, 2014 Council Meeting:**

At its April 29, 2014 public meeting, the Council considered the April 22, 2014 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted said findings and recommendations. The Council, therefore, found that:

1. The Custodian complied with the Council’s March 25, 2014 Interim Order because he responded in the prescribed time frame by providing the requested records and simultaneously provided certified confirmation of compliance to the Executive Director.
  
2. Although the Custodian unlawfully denied access to the sought records based on OPRA’s exemption of “criminal investigatory records,” he has since provided redacted copies of all records responsive to the Complainant’s request. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1. 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

---

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

<sup>2</sup> Represented by Debra G. Simms, Esq. (Newark, N.J.).

not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

#### Procedural History:

On May 1, 2014, the Council distributed its Final Decision to all parties. The Complainant received the Final Decision on May 7, 2014. On May 13, 2014, the Complainant filed a request for reconsideration of the Council's March 26, 2014 Interim Order and April 29, 2014 Final Decision based on mistake, extraordinary circumstances, fraud, new evidence, change in circumstances, and illegality.

On May 28, 2014, the GRC requested a certification from the Custodian regarding his compliance with the Council's March 26, 2014 Interim Order. On May 29, 2014, the Custodian certified as follows:

As per the Interim Order received on March 27, 2014, I have complied with the directive that all files relating to the [Complainant's] October 24, 2000 arrest be retrieved from the Prosecutor's Office, redacted accordingly and 8 pages of the arrest report was mailed to the complainant on April 2, 2014 by me, Albert Fusco . . . via USPS.

#### 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. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

On May 13, 2014, four (4) business days from his receipt of the Council's April 29, 2014 Final Decision, the Complainant filed the request for reconsideration of the Council's Final Decision and its Interim Order dated March 26, 2014. The Complainant's request for reconsideration of the Council's March 26, 2014 Interim Order, however, was made well beyond the required ten (10) business day filing period. Thus, only the Complainant's request for reconsideration of the Council's April 29, 2014 Final Decision will be addressed.

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 was required to establish either of the necessary criteria set forth above: that 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. The Complainant failed to establish that the complaint should be reconsidered based on mistake, extraordinary circumstances, fraud, new evidence, change in circumstances, and illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. *See D'Atria*, 242 N.J. Super. at 401. The Complainant certified that, as of May 13, 2014, he had not received the documents ordered disclosed by the Council. The Custodian, however, certified on both April 2, 2014 and May 29, 2014 that he mailed redacted copies of the responsive documents to the Complainant on April 2, 2014. Additionally, the Custodian sent second copies of the compliance documents to the Complainant via certified mail on June 4, 2014. 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 that the Complainant has failed to establish in his request for reconsideration of the Council’s April 29, 2014 Final Decision that either 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. The Complainant failed to establish that the complaint should be reconsidered based on mistake, extraordinary circumstances, fraud, new evidence, change in circumstances, and illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. The Complainant certified that, as of May 13, 2014, he had not received the documents ordered disclosed by the Council. The Custodian, however, certified on both April 2, 2014 and May 29, 2014 that he mailed redacted copies of the responsive documents to the Complainant on April 2, 2014. Additionally, the Custodian sent second copies of the compliance documents to the Complainant via certified mail on June 4, 2014. 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: Robert T. Sharkey, Esq.  
Staff Attorney

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

June 17, 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**

**April 29, 2014 Government Records Council Meeting**

Dadge Dawara  
Complainant

Complaint No.: 2013-267

v.

Office of the Essex County Administrator  
Custodian of Record

At the April 29, 2014 public meeting, the Government Records Council (“Council”) considered the April 22, 2014 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian complied with the Council’s March 25, 2014 Interim Order because he responded in the prescribed time frame by providing the requested records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the sought records based on OPRA’s exemption of “criminal investigatory records,” he has since provided redacted copies of all records responsive to the Complainant’s request. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1. 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 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 29<sup>th</sup> Day of April, 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: May 2, 2014**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
April 29, 2014 Council Meeting**

**Dadge Dawara<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-267**

v.

**Office of the Essex County Administrator<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** The Complainant seeks “copies of all my police report (*sic*) for October 24, 2000.”

**Custodian of Record:** Al Fusco

**Request Received by Custodian:** July 31, 2013

**Response Made by Custodian:** August 7, 2013

**GRC Complaint Received:** September 17, 2013

**Background**

**March 25, 2014 Council Meeting:**

At its March 25, 2014 public meeting, the Council considered the March 18, 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 has not borne his burden of proving that he lawfully denied access to the Complainant’s valid OPRA request based on the statute’s exemption of “criminal investigatory records” from public access. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012); Burnett v. County of Gloucester, 415 N.J. Super. 506, 515-16 (App. Div. 2010). Accordingly, the Custodian shall provide to the Complainant a copy of his October 24, 2000 arrest report, making all appropriate redactions, and any additional responsive records not exempt from disclosure under OPRA. *See* Morgano v. Essex County Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008). *See also* Feggans v. City of Newark (Essex), GRC Complaint No. 2007-238 (October 2008); Nance v. Scotch Plains Township Police Department, GRC Complaint No. 2003-125 (January 2005); Janeczko v. Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).

---

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

<sup>2</sup> Represented by James Paganelli, Esq. (Newark, N.J.).

2. **The Custodian shall comply with item number one (#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 1:4-4,<sup>3</sup> to the Executive Director.<sup>4</sup>**
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.

Procedural History:

On March 26, 2014, the Council distributed its Interim Order to all parties. On April 2, 2014, the Custodian responded to the Council’s Interim Order.

Analysis

Compliance

At its March 25, 2014 meeting, the Council ordered the Custodian to provide to the Complainant a copy of his October 24, 2000 arrest report, making all appropriate redactions, and any additional responsive records not exempt from disclosure under OPRA within five (5) business days from receipt of same and to submit certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director. On March 26, 2014, the Council distributed its Interim Order to all parties, providing the Custodian five (5) business days to comply with the terms of said Order. Thus, the Custodian’s response was due by close of business on April 2, 2014.

On April 2, 2014, the fifth (5<sup>th</sup>) business day after receipt of the Council’s Order, the Custodian responded by providing a certification that the requested documents had been retrieved, redacted, and were being mailed on that date to the Complainant. The Custodian also provided copies of the redacted, disclosed documents to the GRC with an accompanying redaction index.

Therefore, the Custodian complied with the Council’s March 25, 2014 Interim Order because he responded in the prescribed time frame by providing the requested records and simultaneously provided certified confirmation of compliance to the Executive Director.

---

<sup>3</sup> “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.”

<sup>4</sup> Satisfactory compliance requires that the Custodian deliver the record(s) 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.

## **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 unlawfully denied access to the sought records based on OPRA’s exemption of “criminal investigatory records,” he has since provided redacted copies of all records responsive to the Complainant’s request. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1. 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 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 complied with the Council’s March 25, 2014 Interim Order because he responded in the prescribed time frame by providing the requested records and simultaneously provided certified confirmation of compliance to the Executive Director.
2. Although the Custodian unlawfully denied access to the sought records based on OPRA’s exemption of “criminal investigatory records,” he has since provided redacted copies of all records responsive to the Complainant’s request. *See* N.J.S.A.

47:1A-6; N.J.S.A. 47:1A-1.1. 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 unreasonable denial of access under the totality of the circumstances.

Prepared By: Robert T. Sharkey, Esq.  
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.  
Senior Counsel

April 22, 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

INTERIM ORDER

March 25, 2014 Government Records Council Meeting

Dadge Dawara  
Complainant

Complaint No. 2013-267

v.

Office of the Essex County Administrator  
Custodian of Record

At the March 25, 2014 public meeting, the Government Records Council (“Council”) considered the March 18, 2014 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian has not borne his burden of proving that he lawfully denied access to the Complainant’s valid OPRA request based on the statute’s exemption of “criminal investigatory records” from public access. See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012); Burnett v. County of Gloucester, 415 N.J. Super. 506, 515-16 (App. Div. 2010). Accordingly, the Custodian shall provide to the Complainant a copy of his October 24, 2000 arrest report, making all appropriate redactions, and any additional responsive records not exempt from disclosure under OPRA. See Morgano v. Essex County Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008). See also Feggans v. City of Newark (Essex), GRC Complaint No. 2007-238 (October 2008); Nance v. Scotch Plains Township Police Department, GRC Complaint No. 2003-125 (January 2005); Janeczko v. Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).
2. **The Custodian shall comply with item number one (#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 1:4-4,<sup>1</sup> to the Executive Director.<sup>2</sup>**

<sup>1</sup> “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.”

<sup>2</sup> Satisfactory compliance requires that the Custodian deliver the record(s) 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.

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.

Interim Order Rendered by the  
Government Records Council  
On The 25<sup>th</sup> Day of March, 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: March 26, 2014**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
March 25, 2014 Council Meeting**

**Dadje Dawara<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-267**

v.

**Office of the Essex County Administrator<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** The Complainant seeks “copies of all my police report for October 24, 2000.”

**Custodian of Record:** Al Fusco

**Request Received by Custodian:** July 31, 2013

**Response Made by Custodian:** August 7, 2013

**GRC Complaint Received:** September 17, 2013

**Background<sup>3</sup>**

**Request and Response:**

On July 31, 2013, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On August 7, 2013, the Custodian responded in writing by denying the Complainant’s request based on OPRA’s exemption from disclosure of “criminal investigatory records” and due to its lack of specificity.

**Denial of Access Complaint:**

On September 17, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that his request was improperly denied because the law enforcement investigation had been completed and all related judicial proceedings had taken place. The Complainant further argues that, based on the language of the statute and established case law, the Custodian knowingly and willfully violated OPRA in denying his request.

---

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

<sup>2</sup> Represented by James Paganelli, Esq. (Newark, N.J.).

<sup>3</sup> 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.

Dadje Dawara v. Office of the Essex County Administrator, GRC 2013-267 – Findings and Recommendations of the Executive Director

### Statement of Information:

On October 16, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that he received the Complainant’s OPRA request on July 31, 2013, and responded on August 7, 2013. The Custodian argues that the requested police reports are exempt from disclosure, whether the file is open or closed, as criminal investigatory records. *Citing Kovalcik v. Somerset Cnty. Prosecutor’s Office*, 206 N.J. 581, 591 (2011); *Bent v. Twp. of Stafford Police Dep’t*, 381 N.J. Super. 30, 38-39 (App. Div. 2005). The Custodian notes that this exemption applies to all investigations, whether resolved or unresolved, and without reference to the status of the investigation. *Citing Janeczko v. Div. of Criminal Justice*, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004); *Johnson/Press of Atlantic City v. Div. of State Police*, GRC Complaint No. 2004-46 (June 2004); *Harvey v. Div. of State Police*, GRC Complaint No. 2004-65 (July 2004). The Custodian additionally contends that the Complainant’s request was properly denied because, rather than seeking specific government records, it sets forth a blanket request. *Citing Bent*, 381 N.J. Super. at 37, 39; *MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control*, 375 N.J. Super. 534, 546-49 (App. Div. 2005).

### Analysis

#### 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.

The New Jersey Appellate Division has held that OPRA “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. *MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control*, 375 N.J. Super. 534, 546 (App. Div. 2005) (citing N.J.S.A. 47:1A-1) (quotations omitted).

The Court reasoned that:

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 . . . . 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. at 549.



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.” *Id.* at 549; Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>4</sup> NJ Builders Ass’n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

In contrast, the court in Burnett v. County of Gloucester, 415 N.J. Super. 506 (App. Div. 2010) evaluated a request for “[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. Likewise, the court in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012) found a request for the E-Z Pass benefits of Port Authority retirees to be valid because it was confined to a specific subject matter that was clearly and reasonably described with sufficient identifying information. *Id.* at 176.

OPRA further states that “[a] government record shall not include . . . *criminal investigatory records* . . . .” N.J.S.A. 47:1A-1.1 (emphasis added). OPRA defines a “criminal investigatory record” as a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding. *Id.* The Council has determined that, under OPRA, “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and include[] information that is part and parcel of an investigation, confirmed and unconfirmed.” Janeczko, GRC Complaint Nos. 2002-79 and 2002-80.

Regarding specific types of criminal investigatory records, the Council has found that police incident reports and continuation reports are records exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. Nance v. Scotch Plains Twp. Police Dep’t, GRC Complaint No. 2003-125 (January 2005). Relatedly, in Feggans v. City of Newark (Essex), GRC Complaint No. 2007-238 (October 2008), the custodian provided the complainant with copies of police incident reports but not of incident summaries and results sheets. The Council stated that the custodian lawfully denied access because, as the incident reports are exempt from disclosure and the incident summaries and results sheets summarized information contained in the reports, these latter types of documents should also be considered exempt criminal investigatory records under N.J.S.A. 47:1A-1.1. *Id.*

In contrast, in Morgano v. Essex County Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008), the Council considered a request for several types of investigatory records and, though it found criminal history reports to be exempt from disclosure, it determined that arrest reports can be obtained under OPRA. Notwithstanding N.J.S.A. 47:1A-1.1, the Council noted, certain information with respect to a crime must be disclosed pursuant to N.J.S.A. 47:1A-3(b), which deals with ongoing investigations:

---

<sup>4</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

Of relevance to the instant complaint is the information this subsection [N.J.S.A. 47:1A-3(b)] requires to be disclosed after a criminal arrest has been made.

Although specific arrest information must be disclosed, the Custodian is under no duty to extract and synthesize such information from government records in order to comply with the provisions of OPRA. The Superior Court made this clear in [MAG] . . . . Accordingly, pursuant to OPRA, this information must be disclosed in the form of a *government record*. The most comprehensive government record containing information subject to disclosure pursuant to N.J.S.A. 47:1A-3(b) is the police arrest report, alternatively referred to as a uniform arrest report.

. . . . Because the arrest report *is required by law to be maintained or kept on file*, it is a government record pursuant to N.J.S.A. 47:1A-1.1, and is subject to disclosure with appropriate redactions pursuant to any lawful exemption under OPRA. Further, arrest reports typically contain the arrestee's (defendant's) name, age, residence, occupation, marital status, time and place of arrest, text of the charges, arresting agency, identity of the arresting personnel, amount of bail and whether it was posted. This is the same information that is mandated for disclosure pursuant to N.J.S.A. 47:1A-3(b).

Morgano, GRC 2007-156 (citations omitted) (emphasis added).

Here, the Complainant requested copies of "all my police report for October 24-2000." While the Complainant's wording is imprecise, his request is still valid. It is confined to a specific subject matter (police reports), and the sought records are clearly and reasonably described with sufficient identifying information (the Complainant's reports from a certain date). Burke, 429 N.J. Super. at 176; Burnett, 415 N.J. Super. at 515-16. Certain records responsive to this request, however, likely fall within those categories of documents and reports previously examined by the GRC and determined to be exempt criminal investigatory records. See Feggans, GRC 2007-238; Nance, GRC 2003-125; Janeczko, GRC Nos. 2002-79 and 2002-80. At the same time, the Complainant's uniform, or police, arrest report from the requested date is also responsive and may be disclosed. See Morgano, GRC 2007-156.

Therefore, the Custodian has not borne his burden of proving that he lawfully denied access to the Complainant's valid OPRA request based on the statute's exemption of "criminal investigatory records" from public access. See N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Burke, 429 N.J. Super. at 176; Burnett, 415 N.J. Super. at 515-16. Accordingly, the Custodian shall provide to the Complainant a copy of his October 24, 2000 arrest report, making all appropriate redactions, and any additional responsive records not exempt from disclosure under OPRA. See Morgano, GRC 2007-156. See also Feggans, GRC 2007-238; Nance, GRC 2003-125; Janeczko, GRC Nos. 2002-79 and 2002-80.

### **Knowing & Willful**

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 has not borne his burden of proving that he lawfully denied access to the Complainant's valid OPRA request based on the statute's exemption of "criminal investigatory records" from public access. *See* N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-1.1; Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012); Burnett v. County of Gloucester, 415 N.J. Super. 506, 515-16 (App. Div. 2010). Accordingly, the Custodian shall provide to the Complainant a copy of his October 24, 2000 arrest report, making all appropriate redactions, and any additional responsive records not exempt from disclosure under OPRA. *See* Morgano v. Essex County Prosecutor's Office, GRC Complaint No. 2007-156 (February 2008). *See also* Feggans v. City of Newark (Essex), GRC Complaint No. 2007-238 (October 2008); Nance v. Scotch Plains Township Police Department, GRC Complaint No. 2003-125 (January 2005); Janeczko v. Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (June 2004).
2. **The Custodian shall comply with item number one (#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 1:4-4,<sup>5</sup> to the Executive Director.<sup>6</sup>**
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: Robert T. Sharkey, Esq.  
Staff Attorney

Approved By: Dawn R. SanFilippo, Esq.  
Senior Counsel

March 18, 2014

---

<sup>5</sup> "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."

<sup>6</sup> Satisfactory compliance requires that the Custodian deliver the record(s) 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.

Dadge Dawara v. Office of the Essex County Administrator, GRC 2013-267 – Findings and Recommendations of the Executive Director