



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

**FINAL DECISION**

**October 29, 2013 Government Records Council Meeting**

John Ciszewski  
Complainant

Complaint No. 2013-90

v.

Newton Police Department (Sussex)  
Custodian of Record

At the October 29, 2013 public meeting, the Government Records Council (“Council”) considered the October 22, 2013 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’s request is invalid because it failed to provide ample identifiers necessary for the original Custodian to locate the responsive records. MAG Entm’t, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ 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); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). *See also* Wolosky v. Township of Boonton (Morris), GRC Complaint No. 2010-243 (February 2012) at 6-7. Thus, the original Custodian did not unlawfully deny access to the responsive records because she was not provided with enough specificity to reasonably identify the records responsive to the Complainant’s request. N.J.S.A. 47:1A-6.

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 29th Day of October, 2013

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: November 1, 2013**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
October 29, 2013 Council Meeting**

**John Ciszewski<sup>1</sup>  
Complainant**

**GRC Complaint No. 2013-90**

**v.**

**Newton Police Department (Sussex)<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of all records of the Complainant's correspondence to the Newton Police Department ("NPD") by e-mail, fax and U.S. mail beginning in January 2010, and all records generated in response to the correspondence:

1. All records, logs, etc., of fax, phone, e-mail, U.S. mail etc. of transmissions of the correspondence the Complainant sent to the NPD and all records generated in response sent to United Postal Service ("UPS"), "OIG" or the U.S. Postal Service ("USPS") and any and all other entities, as well as all records, e-mail logs, fax logs, etc. of this correspondence being transmitted to the USPS, OIG, the Postal Inspection Service and all other entities.
2. All records of correspondence (e-mail, fax, telephone, USPS) between the NPD and OIG, USPS and all other entities concerning the Complainant's correspondence to NPD and all records generated in response to the correspondence.<sup>3</sup>

**Custodian of Record:** Chief Michael Richards<sup>4</sup>  
**Request Received by Custodian:** February 27, 2013  
**Response Made by Custodian:** March 7, 2013  
**GRC Complaint Received:** March 20, 2013

**Background<sup>5</sup>**

**Request and Response:**

On February 27, 2013, the Complainant submitted an Open Public Records Act ("OPRA") request to the original Custodian seeking the above-mentioned records. On March 7,

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

<sup>2</sup> Represented by Richard Stein, Esq., of Laddey, Clark & Ryan, LLP (Sparta, NJ).

<sup>3</sup> The Complainant also requests that the Custodian provide an affidavit to the truthfulness of his response.

<sup>4</sup> The original Custodian of Record was Ms. Darlene V. Cooper.

<sup>5</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.

2013, the original Custodian responded in writing advising that records were available for pickup and that the copy cost is \$0.75. The Complainant requested that the Custodian send the records via e-mail or U.S. mail. The original Custodian sent 14 pages of responsive records to the Complainant on March 11, 2013 upon receipt of the appropriate copying cost.

#### Denial of Access Complaint:

On March 20, 2013, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts the Custodian provided 14 pages of records that appear to be call logs. The Complainant contends that these records were not responsive to his OPRA request. The Complainant states that he sent multiple letters to the NPD that were not included in Ms. Cooper’s response. The Complainant further asserts that the Custodian did not address either of his individual request items.

#### Statement of Information:

On May 13, 2013, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that the NPD received the Complainant’s OPRA request on February 27, 2013. The Custodian certifies that the original Custodian conducted a computer search of the NPD’s records and located general complaint forms (14 pages) regarding the Complainant over a 13-month time frame from February, 2010 to March 2011. The Custodian certifies that the original Custodian sent the records to the Complainant on March 11, 2013 upon receipt of the appropriate copy cost.

The Custodian certifies that upon receipt of the Complainant’s Denial of Access Complaint, the NPD realized the Complainant was seeking records about a non-existent record that resulted in Ciszewski v. Newton Police Department (Sussex), GRC Complaint No. 2010-82 (May 2010).<sup>6</sup> The Custodian certifies that on February 13, 2010, the Complainant sought records regarding himself from the NPD and was denied on a basis that no records existed. The Custodian certifies that during the pendency of that complaint, the Complainant sent various correspondence to the NPD. The Custodian certifies that once the NPD realized he was seeking records regarding Ciszewski, the original Custodian scanned and e-mailed those records to the Complainant on March 28, 2013. The Custodian certifies that the Complainant took issue with the fact that some records were upside down or sideways and requested copies be resent. The Custodian certifies that he attempted to get clarification from the Complainant but was unsuccessful and thus no further response was given because the Complainant was provided with all records that exist.

The Custodian certifies that the NPD provided the Complainant with every record on file regarding Ciszewski. The Custodian contends that the GRC has routinely determined that requests for “any and all” records is invalid. The Custodian argues that the original Custodian went beyond her obligation by searching for and providing responsive records to the Complainant. The Custodian asserts that although the original Custodian disclosed records following the filing of this complaint, she had no legal obligation to do so and thus acted in good faith to satisfy the Complainant’s invalid request. The Custodian asserts that had the

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<sup>6</sup> The Council administratively disposed of GRC 2010-82 on the basis that no records responsive existed.

Complainant clarified his OPRA request after the original Custodian's first response, the NPD would have provided the Complainant the records sought. The Custodian further contends that the Custodian's initial failure to provide responsive records does not amount to a knowing and willful violation of OPRA.

#### Additional Submissions:

On June 25, 2013, the Complainant noted that he received approximately 122 pages on March 28, 2013; however, the document index reflects approximately 194 pages of records were provided. The Complainant asks the Custodian to confirm that there was a difference of approximately 72 pages.

### Analysis<sup>7</sup>

#### 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 "[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." MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005)(emphasis added). The Court reasoned that:

Most 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. at 549 (emphasis added).

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<sup>7</sup> There may be other OPRA issues in this matter; however, the Council's analysis is based solely on the claims made in the Complainant's Denial of Access Complaint.

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.* (emphasis added). See also Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>8</sup> NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Further, in Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010), the Council examined what constitutes a valid request for e-mails under OPRA. The Council determined that:

*In accord with MAG, supra, and its progeny, in order to specifically identify an e-mail, OPRA requests must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof.*

*Id.* at 5 (emphasis in original).

The Council has also applied the criteria set forth in Elcavage, to other forms of correspondence, such as letters. See Armenti v. Robbinsville BOE (Mercer), GRC Complaint No. 2009-154 (Interim Order dated May 24, 2011).

Additionally, in Burke v. Brandes, 429 N.J. Super. 169 (App. Div. 2012), the Court held that the defendant “performed a search and was able to locate records responsive ...” which “... belied any assertion that the request was lacking in specificity or was overbroad.” *Id.* at 177. See also Gannett v. Cnty. of Middlesex, 379 N.J. Super. 205 (App. Div. 2005) (holding that “[s]uch a voluntary disclosure of most of the documents sought ... constituted a waiver of whatever right the County may have had to deny Gannett’s entire OPRA request on the ground that it was improper.” *Id.* at 213).

Here, the Complainant’s request sought “... all records of [his] correspondence to the [NPD] ...” and all records generated from that correspondence beginning in January 2010. The original Custodian initially responded providing access to records she believed were responsive to the Complainant’s request. However, the evidence indicates that after the filing of the complaint, the original Custodian realized that the Complainant was seeking correspondence submitted as part of Ciszewski, GRC 2010-82, based on the Complainant’s statement that he submitted multiple letters to the NPD that were not included in the March 11, 2013 response. Thus, the original Custodian provided the Complainant a number of responsive records on March 28, 2013.<sup>9</sup>

<sup>8</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

<sup>9</sup> The Complainant took issue with the number of records identified in the Custodian’s SOI document index as responsive. A review of the index indicates that the Custodian included 72 pages of records (including the Complainant’s request at issue here and all subsequent correspondence between the parties) that were not responsive to the Complainant’s request because they came into exist after submission of the request. See Kohn v. Township of Livingston (Essex), GRC Complaint No. 2011-362 (February 2013) (citing Driscoll v. School District of the Chathams (Morris), GRC Complaint No. 2007-303 (June 2008)).

The Complainant's request did not include a subject for the correspondence; it generally sought all correspondence the Complainant sent to the NPD for a certain time frame and all records generated from that correspondence. Following the criteria set forth in Elcavage, 2009-07, and the facts presented herein, the GRC is satisfied that the lack of subject in the Complainant's request did not provide the original Custodian enough information to reasonably identify the records the Complainant sought and thus the request was invalid. This complaint is also distinguishable from Burke, and Gannett, because although the original Custodian attempted to respond to same, her failure to provide the responsive records sought reinforces that the request did not reasonably identify the records sought. *See* Wolosky v. Township of Boonton (Morris), GRC Complaint No. 2010-243 (February 2012) at 6-7 (holding that the custodian's failure to initially identify and provide every responsive record reinforced the fact that insufficient nature of the complainant's request).

Therefore, the Complainant's request is invalid because it failed to provide ample identifiers necessary for the original Custodian to locate the responsive records. MAG, 375 N.J. Super. at 546; Bent, 381 N.J. Super. at 37; NJ Builders, 390 N.J. Super. at 180; Schuler, GRC 2007-151; Elcavage, GRC 2009-07. *See also* Wolosky, GRC 2010-243. Thus, the original Custodian did not unlawfully deny access to the responsive records because she was not provided with enough specificity to reasonably identify the records responsive to the Complainant's request. N.J.S.A. 47:1A-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant's request is invalid because it failed to provide ample identifiers necessary for the original Custodian to locate the responsive records. MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); NJ Builders Assoc. v. NJ 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); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2009-07 (April 2010). *See also* Wolosky v. Township of Boonton (Morris), GRC Complaint No. 2010-243 (February 2012) at 6-7. Thus, the original Custodian did not unlawfully deny access to the responsive records because she was not provided with enough specificity to reasonably identify the records responsive to the Complainant's request. N.J.S.A. 47:1A-6.

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Brandon D. Minde, Esq.  
Executive Director

October 22, 2013