



State of New Jersey  
GOVERNMENT RECORDS COUNCIL

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TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

RICHARD E. CONSTABLE, III  
Commissioner

FINAL DECISION

January 30, 2015 Government Records Council Meeting

Adam Reed  
Complainant

Complaint No. 2014-158

v.

Camden County Police Department  
Custodian of Record

At the January 30, 2015 public meeting, the Government Records Council (“Council”) considered the January 20, 2015 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. In the absence of any evidence indicating the Camden County Police Department staff member who responded to the Complainant’s OPRA request, the GRC is unable to determine the identity of the staff member of the Camden County Police Department that violated N.J.S.A. 47:1A-5(h).
2. To the extent of the Complainant’s request for “any and all . . . documents/information,” the Custodian did not unlawfully deny access to the request, because same is invalid as overly broad and fails to identify specific, government records. N.J.S.A. 47:1A-6. See MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).
3. The Custodian lawfully denied access to the Complainant’s request for “write-ups, complaints, disciplinary charges/reports, investigatory reports and/or incident reports” of several Camden County Police Department officers. N.J.S.A. 47:1A-6. Said records are exempt from access under OPRA as personnel records pursuant to N.J.S.A. 47:1A-10, Parreott v. Asbury Park Police Dep’t (Monmouth), GRC Complaint No. 2011-78 (Reconsideration dated May 29, 2012), Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010), and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004).
4. Here, the Camden County Police Department violated N.J.S.A. 47:1A-5(h) by failing to forward the Complainant’s OPRA request to the Custodian or direct the Complainant to the Custodian. However, the Custodian did not unlawfully deny



access to the records because portions of the request are invalid as overly broad and the remainder is exempt from access pursuant to N.J.S.A. 47:1A-10. 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 30<sup>th</sup> Day of January, 2015

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: February 4, 2015**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 30, 2015 Council Meeting**

**Adam Reed<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-158**

**v.**

**Camden County Police Department<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Hard copies of:

“Any and all copies of documents/information showing write-ups, complaints, disciplinary charges/reports, investigatory reports and/or incident reports between January, 2001 – October 25, 2013[.] And any and all results therefrom, such as but not limited to: sanctions or reprimands, of the following Camden County Police Department/Camden County Police Department Metro Division personnels[sic]:

1. Sgt. Carmello Villegas;
2. Officer Patricia Kelly;
3. Sgt. Janett Simpson;
4. Todd J. Watkins;
5. Dave Richmond;
6. Sgt. Christopher Frucci;
7. Sgt. Victor Diaz; and
8. Sgt. Benito Gonzalez.”

**Custodian of Record:** Maria Efstratiades  
**Request Received by Custodian:** February 6, 2014  
**Response Made by Custodian:** February 24, 2014  
**GRC Complaint Received:** April 1, 2014

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

**Request and Response:**

On February 6, 2014, the Complainant submitted an Open Public Records Act (“OPRA”)

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

<sup>2</sup> Represented by Howard Goldberg, Esq. (Camden, NJ).

<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.

request to the Custodian seeking the above-mentioned records. The request was made on the New Jersey Department of Corrections' "Government Records Request Form." On February 24, 2014, eleven (11) business days later, a representative of Camden County Police Department ("CCPD") responded, in writing, advising the Complainant that his request "must be submitted and authorized through our Municipal Prosecutor's Office."

#### Denial of Access Complaint:

On April 1, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC"). The Complainant asserted that on December 31, 2013, he submitted an OPRA request to the Camden County Prosecutor's Office ("CCPO") seeking the same records in the current matter. On January 17, 2014, CCPO responded in writing, stating that they do not have the personnel files of any police officer listed. CCPO stated further that the Complainant should send his OPRA request to the CCPD.

The Complainant contended that he properly submitted an OPRA request to CCPD on February 6, 2014. The Complainant claimed his request was denied with no explanation other than the request had to be sent to, and response authorized, by the Municipal Prosecutor's office.

#### Statement of Information:

On May 8, 2014, the Custodian of Records for Camden County filed a Statement of Information ("SOI"). The Custodian certified that the Complainant's request was received by the CCPD Records and Identification Bureau. The Custodian stated further that the CCPD did not recognize the form as an OPRA request,<sup>4</sup> but rather as a request for discovery. As such, the Custodian claimed that she never received the request. Rather, the CCPD referred the Complainant to the Municipal Prosecutor to seek clearance for the requested records. The Custodian claimed that the records sought cannot be released to the Complainant without prior approval from the Municipal Prosecutor.

Notwithstanding the above, the Custodian argued that even if she had received and treated the Complainant's request as an OPRA request, the request is overly broad pursuant to MAG Entm't v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005).

#### Additional Submissions

On December 15, 2014, the GRC submitted a request for additional information from the Custodian, via e-mail. The GRC attached a copy of the Complainant's request and asked the following:

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<sup>4</sup> The form states on top: "The reverse side of this form contains important information concerning government records...In addition, please note that you may complete and submit requests electronically on the internet at [www.nj.gov/opra](http://www.nj.gov/opra)."

1. Is the request attached to the Complainant's Denial of Access Complaint (see enclosed, entitled [Government Records Request Form]) the document you received from the Complainant and treated as a normal discovery request?

On December 30, 2014, Michael Daniels ("Mr. Daniels"), the CCPD's Public Information Officer, responded to the GRC's inquiry, in writing. Mr. Daniels certified that the copy of the "Government Records Request Form" was the document received by the CCPD's Records and Identification Bureau. Mr. Daniels further certified that the request was treated as a discovery request and not request for records under OPRA.

### Analysis

#### Failure to Forward Request

OPRA provides that "[a]ny officer or *employee* of a *public agency* who receives a request for access to a government record *shall forward* the request to the *custodian of the record* or *direct the requestor* to the *custodian of the record*." N.J.S.A. 47:1A-5(h) (emphasis added). In Lombardino v. Borough of Ho-Ho-Kus (Bergen), GRC Complaint No. 2013-92 (October 2013), the complainant submitted an OPRA request using the Borough of Ho-Ho-Kus's official request form. The recipient of the request believed the request to be for discovery, and forwarded the request to the municipal prosecutor instead of the OPRA custodian. The Council found that the recipient violated N.J.S.A. 47:1A-5(h) for failing to forward the OPRA request to the custodian or direct the complainant to the custodian.

OPRA further 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).

In the instant matter, the CCPD Records and Identification Bureau responded to the Complainant's request eleven (11) business days later, advising the Complainant to submit his request to the Municipal Prosecutor's Office. The Custodian certified that she never received the Complainant's request since it was treated as a request for discovery, *vis a vis* a request under OPRA.

A review of the Complainant's request reveals that the form used by the Complainant meets the criteria set forth in N.J.S.A. 47:1A-5(f), and is substantially similar to the GRC's model request form. Moreover, the form directs the requestor to the website "[www.nj.gov/opra](http://www.nj.gov/opra)" (emphasis added) if they wished to electronically submit a records request. Thus, the evidence in the record demonstrates that the Complainant's request was made pursuant to OPRA, and should have been treated as such, rather than a discovery request.

However, the evidence in the record does not identify the staff member of the CCPD responsible for responding to the Complainant's request. In Barkley v. NJ Department of Treasury, GRC Complaint No. 2009-128 (May 2010), the agency was unable to identify the staff member who responded to the complainant's letter request. As such, the Council was unable to identify the individual who violated N.J.S.A. 47:1A-5(h).

Therefore, in the absence of any evidence indicating the CCPD staff member who responded to the Complainant's OPRA request, the GRC is unable to determine the identity of the staff member of the CCPD that violated N.J.S.A. 47:1A-5(h).

### **Invalid Request**

The New Jersey Appellate Division has held that:

*While 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 Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).

The Court reasoned 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. at 549 (emphasis added).

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 (emphasis added). Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005);<sup>5</sup> 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).

In the instant matter the Custodian asserted in her SOI that the Complainant’s OPRA request is deficient because the request was “a wholesale request for information that is not encompassed by the intent of OPRA.” The Complainant’s request seeks “any and all . . . documents/information . . . [a]nd any and all results therefrom, such as but not limited to . . .” These segments of the Complainant’s request are similar to MAG, where the complainant sought “all documents or records.” 375 N.J. Super. at 346. A custodian cannot be reasonably expected to locate and produce records based on such generic and broad identifiers.

To the extent of the Complainant’s request for “any and all . . . documents/information,” the Custodian did not unlawfully deny access to the request, because same is invalid as overly broad and fails to identify specific, government records. N.J.S.A. 47:1A-6. See MAG, 375 N.J. Super. at 546.

### **Unlawful Denial of Access**

The remainder of the Complainant’s request seeks “write-ups, complaints, disciplinary charges/reports, investigatory reports and/or incident reports between January 2001 – October 25, 2013” of various CCPD officers. The request identifies specific types of records and the subjects of each, along with a specific time frame. Thus, notwithstanding the above, this portion of the Complainant’s request is not invalid as overly broad. See Burnett v. Coutny of Gloucester 415 N.J. Super. 506 (App. Div. 2010), Parrott v. Asbury Park Police Dep’t (Monmouth), GRC Complaint No. 2011-78 (Reconsideration dated May 29, 2012). The GRC now considers whether the Complaint was unlawfully denied access to these records.

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.

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<sup>5</sup> Affirming Bent v. Stafford Police Dep’t, GRC Case No. 2004-78 (October 2004).

OPRA also 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 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.

Id.

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).

Id.

In Parreott, the Council held that the Complainant's request for citizen complaint records filed against local police officers was a valid request under OPRA. GRC No. 2011-78. However, the Council found that because civilian complaints against police officers are not enumerated under N.J.S.A. 47:1A-10 as available for public access, it is a personnel record exempt from disclosure under OPRA. Id. (citing Vaughn, GRC No. 2009-177, Merino, GRC No. 2003-110).

The specific records at issue are "write-ups, complaints, disciplinary charges/reports, investigatory reports and/or incident reports" of several CCPD officers, filed between January 2001 to October 25, 2013. These records are not included in any of the three (3) categories of personnel records listed above that are available for public access. Thus, it follows that these records are personnel records exempt from access under OPRA pursuant to N.J.S.A. 47:1A-10.

The Custodian lawfully denied access to the Complainant's request for "write-ups, complaints, disciplinary charges/reports, investigatory reports and/or incident reports" of several CCPD officers. N.J.S.A. 47:1A-6. Said records are exempt from access under OPRA as personnel records pursuant to N.J.S.A. 47:1A-10, Parreott, GRC No. 2011-78, Vaughn, GRC No. 2009-177, and Merino, GRC No. 2003-110.

### **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)).

Here, the CCPD violated N.J.S.A. 47:1A-5(h) by failing to forward the Complainant's OPRA request to the Custodian or direct the Complainant to the Custodian. However, the Custodian did not unlawfully deny access to the records because portions of the request are invalid as overly broad and the remainder is exempt from access pursuant to N.J.S.A. 47:1A-10. 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. In the absence of any evidence indicating the Camden County Police Department staff member who responded to the Complainant's OPRA request, the GRC is unable to determine the identity of the staff member of the Camden County Police Department that violated N.J.S.A. 47:1A-5(h).
2. To the extent of the Complainant's request for "any and all . . . documents/information," the Custodian did not unlawfully deny access to the request, because same is invalid as overly broad and fails to identify specific, government records. N.J.S.A. 47:1A-6. See MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (emphasis added).
3. The Custodian lawfully denied access to the Complainant's request for "write-ups, complaints, disciplinary charges/reports, investigatory reports and/or incident reports" of several Camden County Police Department officers. N.J.S.A. 47:1A-6. Said records are exempt from access under OPRA as personnel records pursuant to N.J.S.A. 47:1A-10, Parreott v. Asbury Park Police Dep't (Monmouth), GRC Complaint No. 2011-78 (Reconsideration dated May 29, 2012), Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010), and Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004).
4. Here, the Camden County Police Department violated N.J.S.A. 47:1A-5(h) by failing to forward the Complainant's OPRA request to the Custodian or direct the Complainant to the Custodian. However, the Custodian did not unlawfully deny access to the records because portions of the request are invalid as overly broad and the remainder is exempt from access pursuant to N.J.S.A. 47:1A-10. 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.  
Deputy Executive Director

January 20, 2015