



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

March 31, 2015 Government Records Council Meeting

Robert Kovacs
Complainant

Complaint No. 2014-234

v.

Toms River Police Department (Ocean)
Custodian of Record

At the March 31, 2015 public meeting, the Government Records Council (“Council”) considered the March 24, 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 the Custodian did not unlawfully deny access to the Complainant’s requests for police reports of three (3) individuals, as the requests failed to contain reasonable identifiers to locate responsive documents. N.J.S.A. 47:1A-6. See MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005); Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 515-16 (App. Div. 2010). *See also* Dawara v. Office of the Essex Cnty. Adm’r, GRC Complaint No. 2013-267 (March 2014); Goodman v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2010-323 (April 2012).

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 31st Day of March, 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: April 2, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
March 31, 2015 Council Meeting**

**Robert Kovacs¹
Complainant**

GRC Complaint No. 2014-234

v.

**Toms River Police Department (Ocean)²
Custodial Agency**

Records Relevant to Complaint:

OPRA Request No. 1:

1. One copy of each police report that contains the name “Angela Kiefer.”
2. One copy of each police report that contains the name “Arthur Kiefer.”

OPRA Request No. 2:

1. One copy of each police report containing the name “Cheryl Pizzichillo,” also known as “Cheryl Pizzichello.”

Custodian of Records: J. Mark Mutter
Request Received by Custodian: May 23, 2014
Response Made by Custodian: June 2, 2014
GRC Complaint Received: June 16, 2014

Background³

Request and Response:

On May 15, 2014, the Complainant submitted two (2) Open Public Records Act (“OPRA”) requests seeking the above-mentioned records. On June 2, 2014, five (5) business days after receipt, the Custodian responded in writing, via e-mail, denying the request as overly broad, for failing to identify specific government records, and for requiring the Custodian to conduct research.

¹ No legal representation listed on record.

² Represented by Anthony Merlino, Esq. (Toms River, 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.

Denial of Access Complaint:

On June 16, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant did not elaborate on the basis for his denial of access other than feeling that he is a victim of prejudice due to his incarceration. Based upon his contact address, the Complainant is currently incarcerated at New Jersey State Prison.

Statement of Information:

On July 8, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that no search for responsive records was conducted, arguing that the requests were facially deficient pursuant to MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005) and Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005).⁴ Additionally, the Custodian argued that even if the request was not facially deficient, the requests potentially seek criminal investigatory records or victim’s records exempt from disclosure pursuant to N.J.S.A. 47:1A-1 and -2.2.

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, 375 N.J. Super. at 546 (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.

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

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, 381 N.J. Super. at 37; N.J. 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. Cnty. 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 v. Div. of Criminal Justice, GRC Complaint Nos. 2002-79 & 2002-80 (June 2004).

However, not all law enforcement records are exempt from disclosure. In Dawara v. Office of the Essex Cnty. Adm’r, GRC Complaint No. 2013-267 (March 2014), the complainant sought “all my police report[s] for October 24-2000.” The custodian argued that the request was overly broad and that a request for “police reports” is exempt from disclosure as criminal investigatory records. The GRC disagreed, finding that the request was “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).” Id. (citing Burke, 429 N.J. Super. at 176; Burnett, 415 N.J. Super. at 515-16). Furthermore, the GRC found the request for “police report[s]” may contain responsive records within this category of documents and reports, such as arrest reports, that may be subject to disclosure. Id. (citing Morgano v. Essex Cnty. Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2008)). Therefore, the Council held that the custodian did not prove a lawful denial of access based on the criminal investigatory records exemption. Id.

In the instant matter, the Complainant sought “each police report” containing the name of three (3) individuals. However, unlike the complainant’s request in Dawara, the Complainant’s requests fail to identify a specific date or range of dates for the reports. GRC No. 2013-267. Thus, absent specific dates or range of dates, the Complainant’s request for police reports is overly broad and invalid. *See* MAG, 375 N.J. Super. at 549; Burke, 429 N.J. Super. at 176;

Burnett, 415 N.J. Super. at 515-16. *See also* Goodman v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2010-323 (April 2012).

The Custodian did not unlawfully deny access to the Complainant's requests for police reports of three (3) individuals, as the requests failed to contain reasonable identifiers to locate responsive documents. N.J.S.A. 47:1A-6. *See* MAG, 375 N.J. Super. at 549; Burke, 429 N.J. Super. at 176; Burnett, 415 N.J. Super. at 515-16. *See also* Dawara, GRC No. 2013-267; Goodman, GRC No. 2010-323.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Custodian did not unlawfully deny access to the Complainant's requests for police reports of three (3) individuals, as the requests failed to contain reasonable identifiers to locate responsive documents. N.J.S.A. 47:1A-6. *See* MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 549 (App. Div. 2005); Burke v. Brandes, 429 N.J. Super. 169, 176 (App. Div. 2012); Burnett v. Cnty. of Gloucester, 415 N.J. Super. 506, 515-16 (App. Div. 2010). *See also* Dawara v. Office of the Essex Cnty. Adm'r, GRC Complaint No. 2013-267 (March 2014); Goodman v. Essex Cnty. Prosecutor's Office, GRC Complaint No. 2010-323 (April 2012).

Prepared By: Samuel A. Rosado
Staff Attorney

Approved By: Dawn R. SanFilippo
Deputy Executive Director

March 24, 2015