



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

FINAL DECISION

October 31, 2017 Government Records Council Meeting

Mary Loigu
Complainant

Complaint No. 2014-239

v.

Manasquan Police Department (Monmouth)
Custodian of Record

At the October 31, 2017 public meeting, the Government Records Council (“Council”) considered the October 24, 2017 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Council dismiss the complaint because the complaint was referred to the Office of Administrative Law to resolve issues of conflicting and inadequate evidence, and the Complainant, through Counsel, withdrew the complaint from the Office of Administrative Law in a letter dated September 26, 2017, to the Honorable Lisa James-Beavers, Administrative Law Judge.

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 October, 2017

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 2, 2017



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
October 31, 2017 Council Meeting**

**Mary Loigu¹
Complainant**

GRC Complaint No. 2014-239

v.

**Manasquan Police Department (Monmouth)²
Custodial Agency**

Records Relevant to Complaint:

Request dated May 9, 2014: “5/4/14 [SKM] police report”

Request dated May 14, 2014:

1. Entire police arrest report and photos for SKM dated October 4, 2013.
2. Entire police report and photos for SKM dated May 4, 2014.³

Custodian of Record: Barbara Ilaria

Request Received by Custodian: May 14, 2014

Response Made by Custodian: May 15, 2014

GRC Complaint Received: June 25, 2014

Background

March 31, 2015 Council Meeting:

At its 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, found that:

1. The Custodian’s response was insufficient because she failed to respond in writing to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. Based on the conflicting and inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested

¹ Represented by Joseph C. Lane, Esq. (Manasquan, NJ).

² Represented by Michael D. Schaller, Esq., of King Kitrick Jackson & McWeeney, LLC (Brick, NJ).

³ There were other records requested that are not relevant to this complaint.

Mary Loigu v. Manasquan Police Department (Monmouth), 2014-239 – Supplemental Findings and Recommendations of the Executive Director

records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. This complaint should also be referred to the Office of Administrative Law for determination of (a) whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, and (b) whether the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee.

Procedural History:

On April 1, 2015, the Council distributed its March 31, 2015 Interim Order to all parties. On May 22, 2015, the complaint was transmitted to the Office of Administrative Law ("OAL").

On September 26, 2017, the Complainant's Counsel sent a letter to the Honorable Lisa James-Beavers, Administrative Law Judge, withdrawing the instant complaint from the OAL.

Analysis

No analysis required.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council dismiss the complaint because the complaint was referred to the Office of Administrative Law to resolve issues of conflicting and inadequate evidence, and the Complainant, through Counsel, withdrew the complaint from the Office of Administrative Law in a letter dated September 26, 2017, to the Honorable Lisa James-Beavers, Administrative Law Judge.

Prepared By: John E. Stewart

October 31, 2017



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 31, 2015 Government Records Council Meeting

Mary Loigu
Complainant

Complaint No. 2014-239

v.

Manasquan Police Department (Monmouth)
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:

1. The Custodian's response was insufficient because she failed to respond in writing to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. Based on the conflicting and inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. This complaint should also be referred to the Office of Administrative Law for determination of (a) whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, and (b) whether the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee.

Interim Order 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 1, 2015



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Mary Loigu¹
Complainant**

GRC Complaint No. 2014-239

v.

**Manasquan Police Department (Monmouth)²
Custodial Agency**

Records Relevant to Complaint:³

Request dated May 9, 2014: “5/4/1 [SKM] police report”

Request dated May 14, 2014:

1. Entire police arrest report and photos for SKM dated October 4, 2013.
2. Entire police report and photos for SKM dated May 4, 2014.⁴

Custodian of Record: Barbara Ilaria

Request Received by Custodian: May 14, 2014⁵

Response Made by Custodian: May 15, 2014

GRC Complaint Received: June 25, 2014

Background⁶

Requests and Response:

On May 9, 2014 and May 14, 2014, the Complainant submitted Open Public Records Act (“OPRA”) requests to the Custodian seeking the above-mentioned records. On May 15, 2014, the first (1st) business day following receipt of the May 14, 2014 request, the Custodian responded in writing informing the Complainant that criminal investigatory records, medical examiner

¹ Represented by Joseph C. Lane, Esq. (Manasquan, NJ).

² Represented by Mark G. Kitrick, Esq., of King, Kitrick & Jackson, LLC (Brick, NJ).

³ The Denial of Access Complaint was prepared haphazardly. The Complainant states in the complaint that the request was provided to the Custodian on May 9, 2014; however, the Complainant attached two (2) requests to the complaint: one dated May 9, 2014 and one which appears to be dated May 14, 2014. In the records denied list, the Complainant listed two of the three request items from the request dated May 14, 2014. When subsequently asked for clarification, the Complainant’s Counsel stated that there were two (2) requests, and confirmed that they were dated May 9, 2014 and May 14, 2014; therefore the GRC is treating the complaint as encompassing two requests.

⁴ There were other records requested that are not relevant to this complaint.

⁵ The Custodian did not make any reference to receiving a request dated May 9, 2014.

⁶ 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.

photographs and photographs are not public records as provided by law. The Custodian cited N.J.S.A. 47:1A-1.1 *et seq.* as legal authority for denial of all the requested records. The Custodian also cited Executive Order 69 as additional authority for denial of the photographs. The Custodian failed to identify the governor who promulgated the Executive Order.

Denial of Access Complaint:

On June 25, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant asserts that she provided the request to the Custodian on May 9, 2014.⁷ The Complainant states in the Records Denied List that request item number 1 sought an entire police arrest report and mug shot for SKM dated October 4, 2013. The Complainant states that she received a police report with no detail other than a list of charges filed against SKM. The Complainant also states that she was told by the Police Department that they did not have a mug shot responsive to request item number 1. The Complainant states that request item number 2 sought an entire police report with details and photos of SKM’s suicide dated May 4, 2014.⁸ The Complainant asserts that Chief Correia screamed at her, telling her that she was not entitled to the requested information.

The Complainant attached copies of two (2) requests to the complaint: one dated May 9, 2014 and one dated May 14, 2014. The Complainant failed to attach a copy of the Custodian’s response(s) to the complaint.

Statement of Information:

On July 14, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certifies that she received the Complainant’s request on May 14, 2014, and responded to the request on May 15, 2014. The Custodian certifies that request item number 1 consists of three (3) pages and request item number 2 consists of seven (7) pages. The Custodian certifies that request item number 1 and request item number 2 were provided with redactions; the former was redacted to deny “[p]ersonal information including but not limited to ss# and personal identification information” and the later was redacted to deny “[p]hotos – criminal investigatory, medical examiner’s photos, photos.” The Custodian further certified that the October 4, 2013 and May 4, 2014 photos were denied in their entirety. The Custodian certified that she denied the records, or portions thereof, pursuant to the criminal investigatory records exemption and the medical examiner photos exemption under N.J.S.A. 47:1A-1.1, as well as Executive Order 69.

The Custodian further certifies that the agency “complied with all requests that were permissible pursuant to [OPRA]...[and]...information that was not provided, was done so pursuant to N.J.S.A. 47:1A-1.1 *et sec* (sic) and Executive Order 69.”

⁷ The May 9, 2014 request sought the same record as item number 2 of the May 14, 2014 request.

⁸ The records identified in the complaint as the records denied were the first two items listed in the May 14, 2014 request; however, the description of the records denied does not precisely mirror the description of the records requested. The last item listed in the May 14, 2014 request was not alleged by the Complainant to have been denied.

Additional Submissions:

On August 7, 2014, in response to the GRC's request for clarification of the dates of the Complainant's OPRA requests and the description of the records disclosed, the Complainant's Counsel informed the GRC that two (2) requests were filed dated May 9, 2014 and May 14, 2014. The Complainant's Counsel also attached a two (2) page redacted arrest report for SKM dated October 6, 2013 and what appears to be a redacted CAD printout for call number 13-13095 consisting of one (1) page. Counsel stated that these records were received by the Complainant "concerning the October 4, 2013 incident."

On February 25, 2015, the GRC forwarded the Custodian's SOI to the Custodian's Counsel. The GRC informed Counsel that the SOI was not properly prepared and that the GRC was experiencing difficulty trying to determine which records were denied and the reason(s) therefor. The GRC asked Counsel to have the Custodian correct and clarify the SOI and return same to the GRC within three (3) business days.⁹ The GRC stated that "[t]he document index is inadequate because it does not sufficiently identify what was redacted/denied or why specifically the record, or part thereof, was denied." (Emphasis in original.) The GRC also provided an example of the type of clarification that was necessary and made it clear that the Custodian must provide a legal explanation and statutory citation for each redaction and denial.

The Custodian failed to clarify and return the SOI to the GRC. Instead, the GRC received a letter from the Custodian's Counsel dated March 4, 2015.¹⁰ Counsel stated that in Item No. 12 of the SOI the Custodian was referring to an earlier request that was fulfilled in a timely manner. Counsel further stated that a "second request" was filed which resulted in the instant complaint.¹¹ Counsel also stated that "[t]he basis of this complaint addresses photographs in the possession of the Manasquan Police Department." Counsel stated that there are thirty-one (31) crime scene photographs which are exempt from access pursuant to N.J.S.A. 47:1A-1.1 et seq.

Analysis

Sufficiency of Response

OPRA provides that a custodian's response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g). Further, in Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008), the GRC held that "...[t]he Custodian's response was legally insufficient because he failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5(g)."

Here, the Custodian responded to the Complainant's May 14, 2014 request on May 15, 2014 by forwarding to the Complainant a checklist of "[p]rivileged or [p]rotected" categories of

⁹ The return of an incomplete SOI was provided for in the GRC's request for the SOI dated July 7, 2014.

¹⁰ The Custodian's Counsel telephoned the GRC within the three (3) day time frame to request an extension of time for the Custodian to reply. The GRC granted Counsel's request.

¹¹ The "second request" was not identified by date; however it was presumably the May 14, 2014 request because that is the only request referenced in the SOI by the Custodian.

records with corresponding citations to legal authority. Three (3) categories of records were checked but the records were not identified by description or request item number.

Accordingly, the Custodian's response was insufficient because she failed to respond in writing to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff, GRC 2007-272.

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.

There is ambiguity in the complaint with respect to the requests which formed the basis of the complaint. The Complainant stated that the May 9, 2014 request formed the basis of the complaint. The Complainant's Counsel asserted that the Complainant submitted two (2) requests, one dated May 9, 2014 and one dated May 14, 2014.

Conversely, the Custodian attached a copy of the May 14, 2014 request to the SOI and referenced only that one request in Item No. 7 of the SOI. However, in Item No. 12 of the SOI the Custodian certified that the agency complied with all of the requests, which seems to support the Complainant's allegation that more than one request formed the basis of the complaint. But the Custodian's Counsel stated that in Item No. 12 the Custodian was referring to an earlier request that was fulfilled. Counsel further stated that a second request, presumably the May 14, 2014 request, was the request that resulted in the instant complaint and that there are thirty-one (31) crime scene photographs that formed the basis of said complaint. The GRC noted that the only difference between the May 9, 2014 request and the May 14, 2014 request is that the latter added photographs and the word "entire" to the requested police report. Neither the complaint nor the Custodian's response clarified what constituted an "entire" report. As such, the GRC is unable to determine whether the Custodian responded adequately or in a timely manner to the May 9, 2014 request.

With respect to the March 14, 2014 request, the GRC experienced difficulty trying to determine which records were denied and the reason(s) therefor. The Custodian did not follow the GRC's example of the requirements for the document index. The Custodian pared the document index down from six (6) columns to just four (4) columns, which resulted in a lack of important information being provided to the GRC. The Custodian also failed to provide a specific lawful basis for each redaction. Instead the Custodian lumped together the types of redactions as "[p]ersonal information including but not limited to ss#..." then concluded by citing to N.J.S.A. 47:1A-1.1 and an Executive Order issued by an unidentified governor. The two (2) page redacted arrest report for Sean Minehan dated October 6, 2013, which was provided by the Complainant's Counsel, appears to be a record partially responsive to request item number 1 of the March 14, 2014 request. However the one (1) page redacted CAD printout for call number 13-13095, does not appear to be a record responsive to either the May 9, 2014 request or the May

14, 2014 request. Moreover, the number of pages for each record does not match the number of pages that each record should contain according to the Custodian's SOI. The GRC tried to obtain clarification of these issues but was unable to do so.

Therefore, based on the conflicting and inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. As such, this complaint should be referred to the Office of Administrative Law ("OAL") for a hearing to resolve the facts. This complaint should also be referred to the OAL for determination of (a) whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, and (b) whether the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian's response was insufficient because she failed to respond in writing to each request item contained in the request individually. Therefore, the Custodian has violated OPRA pursuant to N.J.S.A. 47:1A-5(g) and Paff v. Willingboro Bd. of Educ. (Burlington), GRC Complaint No. 2007-272 (May 2008).
2. Based on the conflicting and inadequate evidence in this matter, the GRC is unable to determine whether or not the Custodian unlawfully denied access to the requested records. Therefore, this complaint should be referred to the Office of Administrative Law for a hearing to resolve the facts. This complaint should also be referred to the Office of Administrative Law for determination of (a) whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances, and (b) whether the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee.

Prepared By: John E. Stewart

Approved By: Dawn R. SanFilippo
Deputy Executive Director

March 24, 2015