



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

July 28, 2015 Government Records Council Meeting

Kevin Alexander
Complainant

Complaint No. 2014-268

v.

NJ Department of Corrections
Custodian of Record

At the July 28, 2015 public meeting, the Government Records Council (“Council”) considered the July 21, 2015 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:

1. The Custodian complied with the Council’s June 30, 2015 Interim Order. He responded in the prescribed time frame by certifying that he provided the full name of “SCO E. Oslin” to the Complainant on July 1, 2015, and simultaneously providing certified confirmation of compliance to the Executive Director.
2. The Custodian unlawfully denied access to the name of a corrections officer sought in the Complainant’s July 15, 2014, OPRA request. However, the Custodian timely complied with the Council’s June 30, 2015, Interim Order. 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 28th Day of July, 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: July 30, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director
July 28, 2015 Council Meeting**

**Kevin Alexander¹
Complainant**

GRC Complaint No. 2014-268

v.

**New Jersey Department of Corrections²
Custodial Agency**

Records Relevant to Complaint:

1. “The Full disclosure of SCO: E. Oslin, name whom is employed here at Southern State Correctional Facility” (*sic*).
2. “Any disciplinary report(s) filed against the subject in question with respect to SCO: E. Oslin, & or the equivalent of any writeup(s), remedy form writeup(s), and prior employment within any other correctional facilities or prison setting(s).”

Custodian of Records: John A. Falvey
Request Received by Custodian: July 15, 2014
Response Made by Custodian: July 22, 2014
GRC Complaint Received: July 24, 2014

Background

June 30, 2015 Council Meeting:

At its June 30, 2015, public meeting, the Council considered the June 23, 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 failed to prove that he lawfully denied access to the Complainant’s OPRA request for the full name of “SCO: E. Oslin.” N.J.S.A. 47:1A-6. Notwithstanding the grammatical errors, the Complainant’s request identified the subject matter pursuant to Bent v. Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). The names of public employees are information subject to public access pursuant to N.J.S.A. 47:1A-10. Thus, the Custodian shall produce the information to the Complainant.

¹ No legal representation listed on record.

² No legal representation listed on record.

2. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant's request for disciplinary records and write-ups of a corrections employee. N.J.S.A. 47:1A-6. Such records are personnel records exempt from disclosure pursuant to N.J.S.A. 47:1A-10. *See also Merino v. Borough of Ho-Ho-Kus*, GRC Complaint No. 2003-110 (Interim Order dated March 2004); Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010).
3. **The Custodian shall comply with Item No. 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 1:4-4,³ to the Executive Director.⁴**
4. 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 July 1, 2015, the Council distributed its Interim Order to all parties. On July 2, 2015, the Custodian responded to the Council's Interim Order. The Custodian certified that on July 1, 2015, he provided the Complainant with the full name of "SCO E. Oslin," a New Jersey Department of Corrections ("DOC") officer.

Analysis

Compliance

At its June 30, 2015, meeting, the Council ordered the Custodian to disclose the full name of the corrections officer sought in the Complainant's July 15, 2014, OPRA request. Additionally, the Council ordered the Custodian to submit certified confirmation of compliance to the Executive Director, in accordance with N.J. Court Rule 1:4-4. On July 1, 2015, 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 July 9, 2015.

On July 2, 2015, the first (1st) business day after receipt of the Council's Order, the Custodian responded to the Council's Order. Therein, the Custodian certified that he provided the Complainant with the full name of the DOC officer. Additionally, the Custodian provided certified confirmation of compliance to the Executive Director.

³ "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."

⁴ 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.

Therefore, the Custodian complied with the Council's June 30, 2015 Interim Order because he responded within the prescribed time frame by certifying that he provided the full name of "SCO E. Oslin" to the Complainant on July 1, 2015. Additionally, the Custodian simultaneously provided certified confirmation of compliance to the Executive Director.

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 name of a corrections officer sought in the Complainant's July 15, 2014, OPRA request, the Custodian timely complied with the Council's June 30, 2015, Interim Order. 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 June 30, 2015 Interim Order. He responded in the prescribed time frame by certifying that he provided the full name of

“SCO E. Oslin” to the Complainant on July 1, 2015, and simultaneously providing certified confirmation of compliance to the Executive Director.

2. The Custodian unlawfully denied access to the name of a corrections officer sought in the Complainant’s July 15, 2014, OPRA request. However, the Custodian timely complied with the Council’s June 30, 2015, Interim Order. 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: Samuel A. Rosado
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

July 21, 2015



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

INTERIM ORDER

June 30, 2015 Government Records Council Meeting

Kevin Alexander
Complainant

Complaint No. 2014-268

v.

NJ Department of Corrections
Custodian of Record

At the June 30, 2015 public meeting, the Government Records Council ("Council") considered the June 23, 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 failed to prove that he lawfully denied access to the Complainant's OPRA request for the full name of "SCO: E. Oslin." N.J.S.A. 47:1A-6. Notwithstanding the grammatical errors, the Complainant's request identified the subject matter pursuant to Bent, 381 N.J. Super. at 37. The names of public employees are information subject to public access pursuant to N.J.S.A. 47:1A-10. Thus, the Custodian shall produce the information to the Complainant.
2. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant's request for disciplinary records and write-ups of a corrections employee. N.J.S.A. 47:1A-6. Such records are personnel records exempt from disclosure pursuant to N.J.S.A. 47:1A-10. *See also* Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004); Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010).
3. **The Custodian shall comply with Item No. 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 1:4-4,¹ to the Executive Director.²**

¹ "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."

² 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.

4. 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 30th Day of June, 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: July 1, 2015

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

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

**Kevin Alexander¹
Complainant**

GRC Complaint No. 2014-268

v.

**NJ Department of Corrections²
Custodial Agency**

Records Relevant to Complaint:

1. “The Full disclosure of SCO: E. Oslin, name whom is employed here at Southern State Correctional Facility” (*sic*).
2. “Any disciplinary report(s) filed against the subject in question with respect to SCO: E. Oslin, & or the equivalent of any writeup(s), remedy form writeup(s), and prior employment within any other correctional facilities or prison setting(s).”

Custodian of Records: John A. Falvey
Request Received by Custodian: July 15, 2014
Response Made by Custodian: July 22, 2014
GRC Complaint Received: July 24, 2014

Background³

Request and Response:

On July 7, 2014, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-mentioned records. On July 22, 2014, five (5) business days after receipt, the Custodian responded in writing. He denied request Item No. 1 as unclear and ambiguous and because the request failed to identify specific government records pursuant to MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546, 549 (App. Div. 2005). The Custodian also denied access to Item No. 2 as seeking personnel records that are not subject to disclosure under OPRA. N.J.S.A. 47:1A-10.

¹ No legal representation listed on record.

² No legal representation listed on record.

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 July 24, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant clarified that he sought disciplinary reports, the full name of employee “E. Oslin,” whether that employee has worked at other correctional institutions and what those institutions might be, and whether the employee has had any disciplinary action taken against him. The Complainant stated that he requested the information for purposes of upcoming litigation and that the records should be subject to disclosure under OPRA.

Statement of Information:

On August 1, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that Item No. 1 was too ambiguous to ascertain a request for records and thus was denied pursuant to MAG. However, the Custodian argued that if Item No. 1 were a request for an individual’s full name, the request was still invalid for failing to identify a specific government record. *See* MAG, 375 N.J. Super. at 546.

Regarding Item No. 2, the Custodian argued that requests for disciplinary reports are not subject to disclosure under OPRA, pursuant to N.J.S.A. 47:1A-10, Vaughn v. City of Trenton, GRC Complaint No. 2009-177 (June 2010), and Riggins v. Jamesburg, GRC Complaint No. 2009-105 (February 2010). Similarly, the Custodian contended that records related to prior employment are also exempt from disclosure under N.J.S.A. 47:1A-10.

Additional Submissions

On August 8, 2014, the Complainant submitted a letter to the GRC in response to the Custodian’s SOI. The Complainant insisted that his request for the individual’s full name, his disciplinary reports, and employment history are a part of the “public domain.” Furthermore, the Complainant accused the employee of falsifying disciplinary reports and commented that the interests of revealing government misconduct should outweigh any individual privacy interest claimed by the employee.

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.

In a request for personnel information, OPRA mandates that:

[T]he 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:

[A]n 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[.]

N.J.S.A. 47:1A-10 (emphasis added).

OPRA Request Item No. 1

In Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005),⁴ the court cited MAG in finding that a requestor must specifically describe the document sought because OPRA operates to make identifiable government records “accessible.” “As such, a proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents.” Id.

The Complainant’s request sought, in part, the “full disclosure of SCO: E. Oslin, name[.]” In his Denial of Access Complaint, the Complainant clarified that he sought the full name of “E. Oslin,” a correctional facility employee. The Custodian asserted that he believed that the Complainant sought the “full disclosure” of E. Oslin and stated as such in his July 22, 2014, response. In his response, the Custodian restated the Complainant’s request as, “I am simply requesting for the full disclosure of SCO E. Oslin, whom is employed here at Southern State Correctional Facility.” However, the Custodian’s recitation omitted “name,” which was explicitly contained in the Complainant’s request.

The Custodian’s error in reciting the Complainant’s request may have attributed to the ambiguity claimed by the Custodian. Additionally, in his SOI the Custodian claimed that the Complainant’s request was unclear but posited that the Complainant may have been requesting E. Oslin’s name. Thus, despite the grammatical and syntax errors in the Complainant’s request, the Custodian is still able to infer the subject of the Complainant’s request. *See Bent*, 381 N.J. Super. at 37. Moreover, a request for the names of public employees is a valid request under OPRA, notwithstanding that it might be a request for information. *See N.J.S.A.* 47:1A-10.

The Custodian failed to prove that he lawfully denied access to the Complainant’s OPRA request for the full name of “SCO: E. Oslin.” N.J.S.A. 47:1A-6. Notwithstanding the grammatical errors, the Complainant’s request identified the subject matter pursuant to Bent, 381 N.J. Super. at 37. The names of public employees are information subject to public access pursuant to N.J.S.A. 47:1A-10. Thus, the Custodian shall produce the information to the Complainant.

⁴ Affirmed on appeal regarding Bent v. Stafford Police Dep't, GRC Complaint No. 2004-78 (October 2004).

OPRA Request Item No. 2

The Complainant sought copies of any disciplinary reports or “write-ups” against “SCO: E. Oslin,” a corrections employee at Southern State Correctional Facility. The Council has previously adjudicated complaints in which the records requested were complaints filed against law enforcement 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 [part] 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.

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, GRC No. 2003-110].

The Custodian has therefore borne his burden of proof that he lawfully denied access to the Complainant’s request for disciplinary records and write-ups of a corrections employee. N.J.S.A. 47:1A-6. Such records are personnel records exempt from disclosure pursuant to N.J.S.A. 47:1A-10. *See also* Merino, GRC No. 2003-110; Vaughn, GRC No. 2009-177.

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 failed to prove that he lawfully denied access to the Complainant’s OPRA request for the full name of “SCO: E. Oslin.” N.J.S.A. 47:1A-6. Notwithstanding the grammatical errors, the Complainant’s request identified the subject matter pursuant to Bent, 381 N.J. Super. at 37. The names of public employees are information subject to

public access pursuant to N.J.S.A. 47:1A-10. Thus, the Custodian shall produce the information to the Complainant.

2. The Custodian has borne his burden of proof that he lawfully denied access to the Complainant's request for disciplinary records and write-ups of a corrections employee. N.J.S.A. 47:1A-6. Such records are personnel records exempt from disclosure pursuant to N.J.S.A. 47:1A-10. *See also* Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004); Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010).
3. **The Custodian shall comply with Item No. 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 1:4-4,⁵ to the Executive Director.⁶**
4. 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: Samuel A. Rosado
Staff Attorney

Reviewed By: Joseph D. Glover
Executive Director

June 23, 2015

⁵ "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."

⁶ 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.