



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**

**April 26, 2016 Government Records Council Meeting**

Shawn July  
Complainant

v.

Essex County Prosecutor's Office  
Custodian of Record

Complaint No. 2014-304

At the April 26, 2016 public meeting, the Government Records Council ("Council") considered the March 22, 2016 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that the Complainant has failed to establish in his request for reconsideration of the Council's July 2, 2015 Final Decision that either: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on mistake. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. The Complainant has not presented new facts or legal arguments which would justify reconsideration. Thus, the Complainant's request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 26<sup>th</sup> Day of April, 2016

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: May 2, 2016**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

***Reconsideration***  
**Supplemental Findings and Recommendations of the Executive Director**  
**April 26, 2016 Council Meeting**

**Shawn July<sup>1</sup>**  
**Complainant**

**GRC Complaint No. 2014-304**

**v.**

**Essex County Prosecutor's Office<sup>2</sup>**  
**Custodial Agency**

**Records Relevant to Complaint:** Copies of the following records:

1. All police arrest reports concerning Michael Richardson, dating from 1998 to 2002
2. All police arrest reports submitted on November 27, 2007 to Honorable Ramona Santiago, J.S.C., in connection with State v. Shawn July, indictment 99-07-2486
  - a. Arrest report for Richardson August 24, 1998, commitment to Essex County Jail ("ECJ")<sup>3</sup>
  - b. Arrest report for Richardson, December 30, 1998, commitment to ECJ
  - c. Arrest report for Richardson, October 30, 1998, commitment ECJ
  - d. Arrest report for Richardson, December 18, 1999, commitment to ECJ
  - e. Arrest report for Richardson, April 20, 2000, commitment to ECJ
  - f. Arrest report for Richardson, June 6, 2000, commitment to ECJ
  - g. Arrest report for Richardson, July 12, 2000, commitment to ECJ
  - h. Arrest report for Richardson, September 27, 2001, commitment to ECJ
3. Arrest report for Richardson in light of criminal trespassing offense, dated August 19, 1999; name used: Brown, Kevin
4. Arrest report for Richardson in light of a bail jump offense, dated October 28, 1999
5. Arrest report for Richardson in light of failing to give CDS to police, dated April 18, 2000
6. Arrest report for Richardson in light of a CDS offense dated November 7, 2000; name used: Wooten, Terry
7. All dispositions in light of every charge Richard was arrested for (Criminal)
8. All dispositions, plea agreements and dismissal of charges for which Richardson was arrested but not convicted, dating from 1998 through 2014
9. A copy of Richardson's criminal case history, dated November 15, 2010, submitted as defendant's exhibit 1 at a November 19, 2010 evidentiary hearing in State v. Shawn July; indictment 99-07-2486, before Superior Court Judge Honorable Ramona A. Santiago

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

<sup>2</sup> Represented by James Paganelli, Esq., Office of the Essex County Counsel.

<sup>3</sup> In his original OPRA request, the Complainant included "Commitment" and "Jail I.D." numbers for Items 2(a) - 2(h) and "Agency" and "Warrant" numbers for items 3, 4, 5, and 6.

10. A copy of Richardson's criminal case history, dated January 7, 2001, submitted as state's exhibit 3 at the November 19, 2010 evidentiary hearing in State v. Shawn July, indictment 99-07-2486, before Superior Court Judge Honorable Ramona A. Santiago

**Custodian of Record:** Debra G. Simms, Esq.

**Request Received by Custodian:** May 8, 2014

**Response Made by Custodian:** May 14, 2014; June 5, 2014; June 8, 2014; June 12, 2014; July 7, 2014; July 31, 2014

**GRC Complaint Received:** August 28, 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's response, concerning items 1-8 of the Complainant's OPRA request was sent on July 7, 2014; however, she certified that the documents responsive to the request were inadvertently omitted and ultimately disclosed on July 31, 2014. Therefore, the Custodian provided the existing responsive records to the Complainant, concerning items 1-8 of the request, on that date.
2. Therefore, the Custodian has borne her burden of proof that she lawfully denied access to the requested "criminal case history" of Michael Richardson, and the record reflects that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

#### Procedural History:

On July 2, 2015, the Council distributed its Final Decision to all parties. On February 26, 2016, the Complainant filed a request for reconsideration of the Council's June 23, 2015 Final Decision based on mistake and illegality. The Complainant argued that the Custodian's certification that she was unable to locate the requested records "[does] not relieve [sic] the agency of its legal obligations in fulfill [sic] an OPRA request." The Complainant additionally argued that the agency "failed to provide any evidence" stating the last date on which responsive documents might have been destroyed. Finally, the Complainant asserted that the public records requested "also fall under the common law" as requestors have a "legally recognized interest in the material contained in the requested documents."

On March 7, 2016, the Custodian submitted objections to the request for reconsideration. The Custodian did not object to the timeliness of the request but instead asserted that the request for reconsideration be denied on its merits. The Custodian noted that she could not "physically provide" to the Complainant what she does not possess. The Custodian argued that the mere fact

that a case is listed on the *promis gavel* system is not indicative of the availability of records. Pursuant to the GRC's decision in Rashaun Barkley v. Essex County Prosecutor's Office, GRC Complaint No. 2013-244, the Custodian noted that the *promis gavel* system is an automated criminal case tracking system capturing base information concerning defendants. The system is a searchable database from which only certain information is available to the public, either on the Internet or at public terminals located in the various county courthouses. The GRC's conclusion in Barkley was that a *promis gavel* is not a record but a system by which basic information can be retrieved. The Custodian further argued that the Custodian seeks a system and not a record. The Custodian further stated that she "was without sufficient information" to represent when the documents could have been destroyed under the retention schedule and noted finally that the Complainant's request was made under OPRA, not the common law right of access.

### Analysis

#### Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the Complainant filed the request for reconsideration of the Council's Order dated July 2, 2015 on February 26, 2016.<sup>4</sup>

Applicable case law holds that:

"A party should not seek reconsideration merely based upon dissatisfaction with a decision." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, . . . 242 N.J. Super. at 401. "Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement." Ibid.

#### In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In

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<sup>4</sup> The Complainant was not in New Jersey custody at the time of the Council's Final Decision. The Complainant was later remanded to New Jersey custody in November 2015 and wrote to the GRC at that time, seeking information as to the appeal process. Due to an admitted clerical error by a GRC staff member, the Request for Reconsideration Form was not sent to the Complainant until February 23, 2016.

The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. *See Cummings*, 295 N.J. Super. at 384. In the instant matter, the Complainant failed to establish that the complaint should be reconsidered based on mistake or illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. *See D'Atria*, 242 N.J. Super. at 401. The Complainant has not presented new facts or legal arguments which would justify reconsideration. Thus, the Complainant's request for reconsideration should be denied. *Cummings*, 295 N.J. Super. at 384; *D'Atria*, 242 N.J. Super. at 401; *Comcast*, 2003 N.J. PUC at 5-6.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Complainant has failed to establish in his request for reconsideration of the Council's July 2, 2015 Final Decision that either: 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on mistake. The Complainant has also failed to show that the Council acted arbitrarily, capriciously, or unreasonably. The Complainant has not presented new facts or legal arguments which would justify reconsideration. Thus, the Complainant's request for reconsideration should be denied. *Cummings v. Bahr*, 295 N.J. Super. 374 (App. Div. 1996); *D'Atria v. D'Atria*, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: Husna Kazmir  
Staff Attorney

March 22, 2016<sup>5</sup>

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<sup>5</sup> This complaint could not be adjudicated at the Council's March 29, 2016 meeting due to lack of a quorum.



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**FINAL DECISION**

**June 30, 2015 Government Records Council Meeting**

Shawn July  
Complainant

Complaint No. 2014-304

v.

Essex County Prosecutor's Office  
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, by a majority vote, adopted the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian's response, concerning items 1-8 of the Complainant's OPRA request, was sent on July 7, 2014; however, she certified that the documents responsive to the request were inadvertently omitted and ultimately disclosed on July 31, 2014. Therefore, the Custodian provided the existing responsive records to the Complainant, concerning items 1-8 of the request, on that date.
2. The Custodian has borne her burden of proof that she lawfully denied access to the requested "criminal case history" of Michael Richardson, and the record reflects that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

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 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 2, 2015**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

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

**Shawn July<sup>1</sup>  
Complainant**

**GRC Complaint No. 2014-304**

**v.**

**Essex County Prosecutor's Office<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Copies of the following records:

1. All police arrest reports concerning Michael Richardson, dating from 1998 to 2002.
2. All police arrest reports submitted on November 27, 2007, to Honorable Ramona Santiago, J.S.C., in connection with State v. Shawn July, indictment #99-07-2486:
  - a. Arrest report for Richardson's August 24, 1998, commitment to Essex County Jail ("ECJ")<sup>3</sup>
  - b. Arrest report for Richardson's December 30, 1998, commitment to ECJ
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  - f. Arrest report for Richardson's June 6, 2000, commitment to ECJ
  - g. Arrest report for Richardson's July 12, 2000, commitment to ECJ
  - h. Arrest report for Richardson's September 27, 2001, commitment to ECJ
3. Arrest report for Richardson in light of criminal trespassing offense dated August 19, 1999; name used: Brown, Kevin
4. Arrest report for Richardson in light of a bail jump offense, dated October 28, 1999.
5. Arrest report for Richardson in light of failing to give CDS to police, dated April 18, 2000.
6. Arrest report for Richardson in light of a CDS offense, dated November 7, 2000; name used: Wooten, Terry.
7. All dispositions in light of every charge Richard was arrested for (Criminal).
8. All dispositions, plea agreements, and dismissal for charges Richardson was arrested for, but not convicted of, dating from 1998 through 2014.
9. A copy of Richardson's criminal case history, dated November 15, 2010, submitted as defendant's exhibit 1 at a November 19, 2010, evidentiary hearing in State v. Shawn July, indictment #99-07-2486, before Superior Court Judge Honorable Ramona A. Santiago.

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

<sup>2</sup> Represented by James Paganelli, Esq., Office of the Essex County Counsel.

<sup>3</sup> In his original OPRA request, the Complainant included "Commitment" and "Jail I.D." numbers for Items 2(a)-2(h), and "Agency" and "Warrant" numbers for items 3, 4, 5, and 6.

10. A copy of Richardson's criminal case history, dated January 7, 2001, submitted as state's exhibit 3 at the November 19, 2010, evidentiary hearing in State v. Shawn July, indictment 99-07-2486, before Superior Court Judge Honorable Ramona A. Santiago.

**Custodian of Record:** Debra G. Simms, Esq.

**Request Received by Custodian:** May 8, 2014

**Response Made by Custodian:** May 14, 2014; June 5, 2014; June 8, 2014; June 12, 2014; July 7, 2014; July 31, 2014

**GRC Complaint Received:** August 28, 2014

### **Background**<sup>4</sup>

#### **Request and Response:**

On May 8, 2014, the Complainant submitted an Open Public Records Act ("OPRA") request to the Custodian to seek the above-mentioned records. On May 14, 2014, the Complainant received a letter<sup>5</sup> from the Custodian, seeking clarification concerning Items 1-8 of the request. The Custodian noted that, using the information provided by the Complainant, a search of the *Promis Gavel* computer system produced records for twelve (12) separate individuals under the name Michael Richardson and nine (9) separate individuals under the name Charles Richardson, all with different dates of birth. The Custodian requested that the Complainant narrow the OPRA request by providing dates of birth, SBI numbers, and indictments or accusation numbers, so that a proper search could be conducted in lieu of the Custodian having to conduct research, pursuant to MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546-549 (App. Div. 2005); Reda v. Tp. of West Milford, GRC Complaint No. 2002-58 (January 17, 2003); Asarnow v. Dept. of Labor and Workforce Development, GRC Complaint No. 2006-24 (May 4, 2006).

In the May 14, 2014 letter, the Custodian noted that, with respect to Items 9 and 10, the age of the case caused the file to be stored off-site. She therefore requested a 14 business day extension of time to search for, retrieve, and examine the file for the documents requested. On May 27, 2014, the Complainant responded to the request for clarification by providing seven (7) dates of birth for Michael Richardson, one SBI number, one FBI number, and two social security numbers.

On June 5, 2014, the Custodian responded to item nos. 9 and 10 of the request, stating that "a search for the file has proven fruitless" and that the file could not be located at that time. Further, the Custodian stated that she was denying the request, because even if the file could have been located, criminal case histories are confidential documents, the release of which is statutorily barred, pursuant to N.J.A.C. 13:59-1.2; 13:5.9-1.4; 13:5.9-2.1; and 13:59-2.4.

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<sup>4</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.

<sup>5</sup> In her letter, the Custodian further noted that searches were unable to be conducted using the jail commitment and jail identification numbers provided by the Complainant, as the computer system does not contain fields for the input of that information, and "even searches by the warrant numbers you provided were fruitless."

On June 10, 2014, the Custodian responded to the Complainant's May 27, 2014, clarification, noting that the additional information received from the Complainant "narrowed the search considerably." The Custodian advised the Complainant that a new search of the *Promis Gavel* computer system produced twelve (12) files associated with Richardson's name and corresponding SBI number. Because the files were stored in different areas and needed to be located, retrieved, and examined to determine if they, in fact, contained the records requested, the Custodian requested an additional 14 business day extension, to July 8, 2014, in order to file a response to the Complainant's OPRA request.

On June 12, 2014, the Custodian wrote to the Complainant regarding items 9 and 10, informing him that the file had been located, but reaffirming the denial of June 5, as criminal case histories are confidential documents. Further, the Custodian advised the Complainant that there was, in fact, no copy of the documents he sought contained in the file.

On July 7, 2014, the Custodian responded to the remainder of the Complainant's OPRA request. The Custodian noted that while the *Promis Gavel* computer system identified twelve (12) cases relating to Michael Richardson, a physical search of the record room produced only six (6) files. The Custodian disclosed copies of the documents responsive to the request that were contained within those six files, noting that the files did not contain all of the documents sought. According to the July 7, 2014, letter, the Custodian was able to locate and provide documents, which she identified as "P#00003613 (cds case),"<sup>6</sup> "P#01010202/Ind. No. 02-01-00070 (consp, carjacking, weapons),"<sup>7</sup> "P#99008322 (robbery/escape/weapons),"<sup>8</sup> "P#99010319 (burglary),"<sup>9</sup> "P#02000313/Ind. No. 02-01-00071 (weapons by a convicted felon),"<sup>10</sup> and "P#02001215."<sup>11</sup>

While all of the documents were inadvertently omitted from the July 7, 2014, disclosure, the Custodian eventually sent the documents to the Complainant on July 31, 2014.

#### Denial of Access Complaint:

On August 24, 2014, the Complainant filed a Denial of Access Complaint with the Government Records Council ("GRC").<sup>12</sup>

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<sup>6</sup> Arrest reports and disposition provided with redactions.

<sup>7</sup> Plea form, arrest reports, judgments of conviction, and amended judgment of conviction provided.

<sup>8</sup> Arrest report provided. No disposition in file.

<sup>9</sup> Arrest reported provided. No disposition in file.

<sup>10</sup> Disposition provided. No arrest report in file.

<sup>11</sup> Arrest reports and dispositions provided.

<sup>12</sup> In his complaint, the Complainant argued that he was entitled to the documents pursuant to Rule 16(a)(1) and (b) of the Federal Rules of Criminal Procedure; Rules 26(b)(2)(B) and 26(f)(3)(B) of the Federal Rules of Civil Procedure; 18 U.S.C. § 3500; *Giglio v. United States*, 405 U.S. 150 (1972); the Due Process Clause of the 14<sup>th</sup> Amendment of the U.S. Constitution; and *State v. Carter*, 278 N.J. Super 629, 643 Law Div. (1994). However, the GRC has no jurisdiction to make a determination based on those merits.

### Statement of Information:

On September 10, 2014, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on May 8, 2014, and responded on May 14, 2014, seeking clarification and a 14 business day extension. The Custodian certified that on June 5, 2014, she denied part of the request and sought an additional extension to June 10, 2014, on which date she sought a final extension to July 7, 2014. On July 7, 2014, the Custodian responded to the request, noting that following the *Promis Gavel* computer search, a physical search of the record room produced only six (6) files and that any responsive files contained within were disclosed, with appropriate redactions. However, the Custodian failed to attach the documents to the July 7 response, and the omitted documents were eventually sent to the Complainant on July 31, 2014.

The Custodian affirmed that upon receipt of the request, a review of “all files relating to Michael Richardson, using the information provided” by the Complainant, was conducted. The Custodian asserted that copies of the criminal case history for Michael Richardson (items 9 and 10 of the request) were exempt from disclosure, as they were confidential documents, pursuant to N.J.A.C. 13:59-1.2; 13:59-2.1; and 13:59-2.4, which address “access and restriction to, and limitations on use of criminal history record information.” The Custodian further argued, “it should be noted that simply because a person’s criminal history record was used at a criminal trial or a related hearing, as is permitted under statute, does not mean that it loses its status as a confidential document.”

With respect to the Complainant’s request for “all police arrest reports” and related dispositions concerning Michael Richardson, from the year 1998 to 2002, the Custodian certified that she provided available and existing records with redactions, pursuant to N.J.S.A. 47:1A-2.2 and N.J.S.A. 47:1A-5. She noted that further redactions were made as to information relating to a different individual, as that information was not responsive to the Complainant’s request.

### 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 the instant complaint, the Complainant sought several criminal records concerning a particular individual, Michael Richardson. The Custodian granted the Complainant’s request in part and denied it in part.

#### Items No. 1-8

With respect to items 1-8 of the Complainant's OPRA request, the Custodian's exchange of correspondence with the Complainant indicates that she conducted a search, using the *Promis Gavel* system, with the information provided in the Complainant's original OPRA request, as well as the Complainant's clarification letter of May 27, 2014. As the Custodian noted in her May 14 letter seeking clarification, the commitment, jail identification, and arrest numbers provided by the Complainant did not constitute information that could be input into the existing computer fields for the search program, and even searches using the warrant numbers provided by the Complainant were "fruitless." After the Complainant responded with additional information on June 10, including dates of birth and Social Security numbers, the Custodian certified that she conducted a search and was able find a total of 12 files associated with the name "Richardson."

As the Custodian certified, a physical search of the record room produced only 6 of those 12 files. The Custodian ultimately disclosed copies of the documents responsive to the request that were contained within those six files, noting that the files did not contain all of the documents sought.

The Custodian's response, concerning items 1-8 of the Complainant's OPRA request, was sent on July 7, 2014; however, she certified that the documents responsive to the request were inadvertently omitted and ultimately disclosed on July 31, 2014. Therefore, the Custodian provided the existing responsive records to the Complainant, concerning items 1-8 of the request, on that date.

#### Items No. 9-10

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 Council has previously found that, in light of a custodian's certification that no records responsive to the request exist, no unlawful denial of access occurred. See Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005). Here, the Custodian certified that, after conducting a search in which the file responsive to the request was located, no copy of the documents sought ("copy of Richardson's criminal case history") was in fact contained in the file. Additionally, the Complainant failed to provide any evidence in the record to rebut the Custodian's certification.

Therefore, the Custodian has borne her burden of proof that she lawfully denied access to the requested "criminal case history" of Michael Richardson, and the record reflects that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer, GRC 2005-49.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian's response, concerning items 1-8 of the Complainant's OPRA request, was sent on July 7, 2014; however, she certified that the documents responsive to the request were inadvertently omitted and ultimately disclosed on July 31, 2014. Therefore, the Custodian provided the existing responsive records to the Complainant, concerning items 1-8 of the request, on that date.
2. The Custodian has borne her burden of proof that she lawfully denied access to the requested "criminal case history" of Michael Richardson, and the record reflects that no responsive record exists. N.J.S.A. 47:1A-6; Pusterhofer v. N.J. Dep't of Educ., GRC Complaint No. 2005-49 (July 2005).

Prepared By: Husna Kazmir  
Staff Attorney

Reviewed By: Joseph D. Glover  
Executive Director

June 23, 2015